TITLE 11.—BANKRUPTCY

Commission on the Bankruptcy Laws of the United States

Pub. L. 91–354, July 24, 1970, 84 Stat. 468, as amended by Pub. L. 92–251, Mar. 17, 1972, 86 Stat. 63; Pub. L. 93–56, § 1, July 1, 1973, 87 Stat. 140, provided:

"Sec. 1. [*Establishment; Purpose; Report; Termination*]

* * * * *

"(c) The Commission shall submit a comprehensive report of its activities, including its recommendations, to the President, the Chief Justice of the United States, and the Congress prior to July 31, 1973. The Commission shall cease to exist thirty days after the date of the submission of its final report.

* * * * *

"Sec. 6. [*Authorization of Appropriations*] There are authorized to be appropriated out of the Salaries and Expenses Fund created pursuant to section 40c(4) of the Bankruptcy Act (11 U.S.C. 68c(4)) to the Commission such sums, but not more than $826,000, as may be necessary to carry out the provisions of this joint resolution."

Availability of Appropriations

Pub. L. 93–56, § 2, July 1, 1973, 87 Stat. 140, provided that: "Money appropriated for the purposes of carrying out the joint resolution entitled 'Joint Resolution to create a commission to study the bankruptcy laws of the United States' approved July 24, 1970 (84 Stat. 468) [set out above], shall remain available until expended or until the Commission established under such joint resolution ceases to exist."

Title Referred to in Other Sections

This title is referred to in title 42 section 616.

Chapter 1.—DEFINITIONS

Chapter Referred to in Other Sections

This chapter is referred to in title 15 section 78fff; title 45 sections 701, 791.

Chapter 2.—COURTS OF BANKRUPTCY

Chapter Referred to in Other Sections

This chapter is referred to in title 15 section 78fff.

Chapter 3.—BANKRUPTS

Chapter Referred to in Other Sections

This chapter is referred to in title 15 section 78fff.

Chapter 4.—COURTS AND PROCEDURE THEREIN

Chapter Referred to in Other Sections

This chapter is referred to in title 15 section 78fff.

§ 51. Designation of newspapers.

Section Referred to in Other Sections

This section is referred to in title 15 section 78fff.

Chapter 5.—OFFICERS, THEIR DUTIES AND COMPENSATION

Chapter Referred to in Other Sections

This chapter is referred to in title 15 section 78fff.

§ 68. Compensation of referees; referees' salary and expense fund; retirement of referees.

(a) Referees shall receive as full compensation for their services salaries to be fixed by the conference, in the light of the recommendations of the councils, made after advising with the district judges of their respective circuits, and of the Director, at rates, in the case of full-time referees, not more than the rate determined for such referees under sections 351 to 361 of Title 2, as adjusted under section 461 of Title 28, and in the case of part-time referees, not more than one-half of such rate, as so adjusted. In fixing the amount of salary to be paid to a referee, consideration shall be given to the average number and the types of, and the average amount of gross assets realized from, cases closed and pending in the territory which the referee is to serve, during the last preceding period of ten years, and to such other factors as may be material. Disbursement of such salaries shall be made monthly by or pursuant to the order of the Director.

(b) The conference, in the light of the recommendations of the councils, made after advising with the district judges of their respective circuits, and of the Director, may increase or decrease any salary, within the limits prescribed in subdivision (a) of this section, if there has been a material increase or decrease in the volume of business or other change in the factors which may be considered material in fixing salaries: *Provided, however,* That during the tenure of any full-time referee his salary shall not be reduced below that at which he was originally appointed under this amendatory Act, and during any term of any such referee his salary shall not be reduced below the salary fixed for him at the beginning of that term.

* * * * *

(d)(1) All referees in bankruptcy and employees in the offices of such referees shall be deemed to be officers and employees in the judicial branch of the United States Government within the meaning of subchapter III of chapter 83 of Title 5.

(2) Any referee who has retired or been retired under the provisions of paragraph (1) of this subdivision may, if called upon by a judge of a court of bankruptcy, perform such duties of a referee, conciliation commissioner, or special master under this title, within the jurisdiction of the court, as he may be able and willing to undertake. The retired referee shall receive as compensation for his services, either full or part time, the salary authorized for the referee serving the territory to which the retired referee is assigned. However, the rate of compensation of a retired referee assigned to serve on a full-time basis in the territory of a part-time referee shall be the minimum rate established by the Judicial Conference of the United States for full-time service. Salaries authorized under this paragraph shall be subject to the provisions of section 8344(a) of Title 5. (As amended Dec. 27, 1973, Pub. L. 93–200, 87 Stat. 838; Aug. 9, 1975, Pub. L. 94–82, title II, § 205(b)(8), 89 Stat. 423.)

Codification

In subsec. (d), references to "subchapter III of chapter 83 of Title 5" and "section 8344(a) of Title 5" were substituted for "the Civil Service Retirement Act" and "section 13(b) of the Civil Service Retirement Act", respectively, on authority of section 7(b) of Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 378, section 1 of which enacted Title 5, Government Organization and Employees.

Amendments

1975—Subsec. (a). Pub. L. 94-82 substituted "at rates, in the case of full-time referees, not more than the rate determined for such referees under sections 351 to 361 of Title 2, as adjusted under section 461 of Title 28, and in the case of part-time referees, not more than one-half of such rate, as so adjusted" for "at rates not more than one-half of such rate, as so adjusted" for "at rates not more than $36,000 per annum for full-time referees, and not more than $18,000 per annum for part-time referees."

1973—Subd. (b). Pub. L. 93-200 struck out proviso that no salary fixed under the provisions of this section for a full-time referee shall be changed more often than once in any two years or in an amount of less than $250.

Increases in Compensation

Salary of full-time referees increased to $37,800 effective on the first day of the first pay period beginning on or after Oct. 1, 1975, see Ex. Ord. No. 11883, Oct. 6, 1975, 40 F.R. 47091, set out as a note under section 5332 of Title 5, Government Organization and Employees.

Judicial Conference Schedule of Special Charges

The Judicial Conference, at its session on Sept. 14, 1973, acting under the authority of provisions of this section, prescribed the following schedule of special charges, eff. Nov. 1, 1973, to be charged and collected by bankruptcy judges for deposit to the referees' salary and expense fund:

"1. For the preparation and mailing of each set of notices in asset cases and in cases filed under the relief chapters of the Act, in excess of 30 notices per set, 25 cents for each additional notice on the first 10,000 and 15 cents per notice on the balance, provided, that in no proceeding administered in straight bankruptcy shall the total charge for this special service exceed 25 percent of the net proceeds realized.

"2. For each set of objections filed to a discharge or confirmation of an arrangement, or plan, $10.00 to be paid by the objecting creditor provided that no such charge shall be made for filing objections to a discharge by the United States Attorney. Where objections to a discharge are filed by the trustee, the charge shall be paid from the estate of the bankrupt unless waived by the court.

"3. For filing petitions for review, for filing petitions for reclamation of property, and for filing petitions for leave to foreclose a mortgage, $10.00 for each petition filed, to be paid at the time of filing by the petitioner, provided that no charge shall be made for petitions for review or for reclamation of property or for leave to foreclose filed on behalf of the United States.

"4. For making a typed copy of any record or paper, $1.00 per page of 250 words or a fraction thereof. For reproducing any record or paper by any means other than typing, 50 cents per page. These fees do not include certification.

"5. For certifying any document or paper, whether the certification is made directly on the document or by separate instrument, $1.00.

"6. For clerical aid on all claims filed in excess of 10, for filing, recording, computing and distributing dividend, 25 cents each in asset cases and cases filed under the relief chapters of the Act.

"7. For reporting performed by a regularly employed member of the referee's staff, a charge may be made for transcripts not exceeding the rates charged by the regular court reporter. The charge shall be paid from the estate of the bankrupt or by the parties requesting that the stenographic record be made and the proceeds shall be transmitted to the clerk for deposit to the credit of the Referees' Salary and Expense Fund.

"8. For amendments to bankrupt's schedules of creditors after notice to creditors, $10.00 for each amendment, provided that the referee may, for good cause, waive the charge in any case.

"9. For searching the records of the referee's office and furnishing information regarding any bankrupt or debtor, $1.00.

"10. For each application for determination of nondischargeability of debts filed by creditors, a fee of $10.00."

Section Referred to in Other Sections

This section is referred to in sections 65, 67, 79, 403, 641, 645, 891, 894, 1033, 1059 of this title; title 28 section 634.

§ 72. Trustees; creditors' committees; and attorneys.

Section Referred to in Other Sections

This section is referred to in title 15 section 78fff.

§ 75. Trustees; duties.

Section Referred to in Other Sections

This section is referred to in title 29 section 1342.

§ 78. Bonds.

(a) Repealed. Pub. L. 92-310, title II, § 222(a)(1), June 6, 1972, 86 Stat. 205.

* * * * *

(g) Corporations organized for the purpose of becoming sureties on bonds or authorized by law to do so may be accepted as sole sureties upon the bonds of receivers, and trustees whenever the courts are satisfied that the rights of all parties in interest will be thereby amply protected.

(h) Bonds of receivers, trustees, and designated depositories shall be filed of record in the office of the clerk of the court and may be proceeded upon in the name of the United States for the use of any person injured by a breach of their conditions or may be enforced as provided in subdivision (n) of this section.

* * * * *

(k) If any receiver, or trustee shall fail to give bond as herein provided and within the time limited, he shall be deemed to have declined his appointment and such failure shall create a vacancy in his office.

(*l*) Repealed. Pub. L. 92-310, title II, § 222(a)(5), June 6, 1972, 86 Stat. 206.

* * * * *

(As amended June 6, 1972, Pub. L. 92-310, title II, § 222(a), 86 Stat. 205.)

Amendments

1972—Subsec. (a). Pub. L. 92-310, § 222(a)(1), repealed subsec. (a) which required referees to enter into bonds not exceeding $5,000.

Subsec. (g). Pub. L. 92-310, § 222(a)(2), eliminated bonds of referees.

Subsec. (h). Pub. L. 92-310, § 222(a)(3), eliminated bonds of referees.

Subsec. (k). Pub. L. 92-310, § 222(a)(4), eliminated reference to referee.

Subsec. (*l*). Pub. L. 92-310, § 222(a)(5), repealed subsec. (*l*) which related to the period during which proceedings could be brought upon referees' bonds.

Limitations on Proceedings Upon Referees' Bonds Procured Before June 6, 1972

Section 222(b) of Pub. L. 92-310 provided that: "Notwithstanding the amendment made by subsection (a)(5) of this section [to subsec. (*l*) of this section] proceedings upon referees' bonds procured before the date of enactment of this act [June 6, 1972] and in effect on such date may be brought at any time during the period ending two years after the alleged breach of the bond, but not thereafter."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 109 of this title.

Chapter 6.—CREDITORS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 15 section 78fff.

§ 93. Proof and allowance of claims.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 section 78fff.

§ 96. Preferred creditors.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 section 78fff.

Chapter 7.—ESTATES

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 15 section 78fff.

§ 104. Debts which have priority.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 section 78fff.

§ 108. Set-offs and counterclaims.

* * * * *

(b) A set-off or counter claim shall not be allowed in favor of any debtor of the bankrupt which (1) is not provable against the estate and allowable under subdivision (g) of section 93 of this title; or (2) was purchased by or transferred to him after the filing of the petition or within four months before such filing with a view to such use and with knowledge or notice that such bankrupt was insolvent or had committed an act of bankruptcy.

CODIFICATION

Subsec. (b) of this section is reset in this Supplement to correct a typographical error in the spelling of the word "debtor" in the 1970 Edition.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 sections 78fff, 1845.

Chapter 8.—PROVISIONS FOR THE RELIEF OF DEBTORS

§ 205. Reorganization of railroads engaged in interstate commerce.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 45 sections 661, 662, 666, 702, 717, 719, 721, 743; title 49 section 20b.

§ 208. Petition subsequent to certification of reorganization plan.

SECTION REFFERED TO IN OTHER SECTIONS

This section is referred to in title 49 section 20b.

Chapter 10.—CORPORATE REORGANIZATIONS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 15 sections 78eee, 78fff; title 29 section 1342.

§ 502. Application of other provisions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 section 78fff.

§ 567. Powers and duties; trustee.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 section 78fff.

APPENDIX

BANKRUPTCY RULES AND OFFICIAL FORMS

UNDER CHAPTERS 1 TO 7, AND 10 TO 13 OF THE BANKRUPTCY ACT

ADOPTION OF RULES AND FORMS

The Bankruptcy Rules and Forms for proceedings under Chapters 1 to 7 and 13 of the Bankruptcy Act were adopted April 24, 1973, effective October 1, 1973. The Rules and Forms for proceedings under Chapter 11 of the Bankruptcy Act were adopted March 18, 1974, effective July 1, 1974. The Rules and Forms for proceedings under Chapters 10 and 12 of the Bankruptcy Act were adopted April 28, 1975, effective August 1, 1975.

ABROGATION OF GENERAL ORDERS

The following General Orders in Bankruptcy, set out in the 1970 Edition of the Code, were abrogated: General Orders 1 to 7, inclusive, 9 to 12, inclusive, 14 to 26, inclusive 28 to 45, inclusive, 47, 48 and 50 to 56, inclusive.

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Rule 1. Scope of Bankruptcy Rules and Forms; Short Title.

The rules and forms in this Title I govern the procedure in courts of bankruptcy in bankruptcy cases under Chapter I–VII of the Bankruptcy Act. These rules may be known and cited as the Bankruptcy Rules. These forms may be known and cited as the Official Bankruptcy Forms.

NOTES OF ADVISORY COMMITTEE ON RULES

A "bankruptcy case," as defined in Rule 101, is one wherein a petition has been filed by or against a person seeking his adjudication as a bankrupt. The case includes all of the proceedings and matters which arise in connection with the case and of which the court of bankruptcy is given jurisdiction by Chapters I–VII of the Bankruptcy Act. These rules and forms in this Title I thus do not apply to a case initiated or ordered to proceed under any of the debtor-relief chapters of the Act. The rules and forms to Title VII govern the procedure in Chapter XIII cases, and Titles II–VI are reserved for cases that are commenced or proceed under Chapters VIII–XII of the Act. These rules do not prescribe except incidentally the procedure for actions or "plenary proceedings" brought in state courts or federal district courts to determine controversies that arise in connection with a bankruptcy case.

"Courts of bankruptcy" are defined in § 1(10) of the Bankruptcy Act, 11 U.S.C. § 1(10), to "include the United States district courts and the district courts of the Territories and possessions to which this Act is or may hereafter be applicable." (References to the Bankruptcy Act hereinafter will be to the Act and will omit citations to Title 11 of the United States Code.) The courts of bankruptcy clearly include the district courts of Guam and the Virgin Islands. 1 Collier, *Bankruptcy* ¶ 1.10, at 71–72 n.22 (14th ed.rev. 1968), citing relevant statutory provisions. (Hereinafter citations to the Collier treaties will omit the title and reference to the edition but will include the date of the revision of the cited material.) It is problematical whether the District Court for the District of the Canal Zone is a bankruptcy court, but it appears that this court has not undertaken to act as a court of bankruptcy. 1 Collier, *supra* at 72.

PART I.—PETITION AND PROCEEDINGS RELATING THERETO AND TO ADJUDICATION

Rule 101. Commencement of Bankruptcy Case.

A bankruptcy case is commenced by filing a petition with the court by or against a person for the purpose of obtaining his adjudication as a bankrupt.

NOTES OF ADVISORY COMMITTEE ON RULES

A Proceeding initiated by a petition for an adjudication under the Bankruptcy Act is designated a "bankruptcy case" for the purpose of these rules. The term embraces all the controversies determinable by the court of bankruptcy and all the matters of administration arising during the pendency of the case. This usage of the word "case" conforms to that employed in many provisions of the Bankruptcy Act. See, *e.g.*, §§ 22, 32, 39b, 40c, 42, and 59d. The word "proceeding" as used in these rules generally refers to a litigated matter arising within a case during the course of administration of an estate. See particularly Rule 703. The rule assumes the continuing applicability of the definition of "petition" in § 1(24) of the Act, but as used in the rules in this title, the word refers to the document commencing a bankruptcy case. The place of filing a petition is more fully particularized in Rule 509.

Rule 102. Reference of Cases; Withdrawal of Reference and Assignment.

(a) Reference.

Upon the filing of a petition the clerk shall refer the case forthwith to a referee or, if a local rule so provides, to more than one referee concurrently. Thereafter all proceedings in the case shall be before the referee except as otherwise provided by subdivision (b) of this rule, by Rules 115(b), 409(c), and 920, by § 2a(15) of the Act when a complaint seeks an injunction to restrain a court, by § 43c of the Act when the office of the referee is vacant, and by the provisions in the Act and the rules in Part VIII governing appeals from judgments of the referee.

(b) Withdrawal of Reference and Assignment.

The district judge may, at any time, for the convenience of parties or other cause, withdraw a case in whole or in part from a referee and either act himself or assign the case or part thereof to another referee in the district.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (a). The first sentence of subdivision (a) of this rule is derived from § 22a of the Act but deletes the clause authorizing the judge or judges to modify the provision for automatic reference. The practice, which has become established in some districts under § 22a of the Act, of referring cases concurrently to 2 or more referees of the court is recognized as proper by this rule.

The second sentence of subdivision (a) is adapted from General Order 12(1). A district judge may act in a bankruptcy case only when he withdraws a case from the referee pursuant to subdivision (b); when the office of the referee becomes vacant as provided in § 43c of the Act; when jury trial before a judge is demanded pursuant to Rule 115(b); when the trial of an issue is placed on the jury calendar of the district court pursuant to Rule 409 (c); when the district judge hears and determines issues under Rule 920 on a certification that contempt has been committed; when a complaint seeks injunctive relief against another court, which may be granted under § 2a (15) of the Act only by the judge; and when a judgment of the referee is being reviewed on appeal pursuant to §§ 2a(10) and 39c of the Act. The rules in Part VIII govern the procedure on review by the district judge of judgments of the referee. Sections 24a and b of the Act and the Federal Rules of Appellate Procedure govern the procedure on appeals to the courts of appeals, and § 24c of the Act and the Rules of the Supreme Court of the United States apply to review of judgments by that Court in bankruptcy cases. As pointed out in the Note to Rule 701, these rules do not govern plenary actions in the district courts of the United States or in the state courts.

Subdivision (b) consolidates the provisions for transfer of a case from one referee to another in § 22b of the Act and for withdrawal of a reference in § 43c of the Act. The withdrawal and reassignment may be on motion or on the court's own initiative. Cause for withdrawal of a reference includes the statutory grounds specified in § 43c, *viz.*, temporary absence or disqualification of the referee and the need for expediting the business of the court. As noted above, § 43c continues to govern the situations in which a referee's office is vacant. Subdivision (b) makes explicit what is implied by the statutory provisions, *viz.*, that the judge may assign or withdraw a part as well as the whole of a case from a referee. See *In re Press Printers & Publishers, Inc.*, 12 F.2d 660, 664–65 (3d Cir. 1926), cert. denied, 276 U.S. 633 (1928). If the reason for assignment or withdrawal ceases to be operative, the case or proceeding may be remanded to the same referee. In district courts having more than one judge the authority conferred by this rule should be exercised according to the rules and orders of the court as provided by 28 U.S.C. § 137.

Subdivision (b) governs only the assignment of a case or proceeding to a referee within the territorial jurisdiction of the court. *Cf. In re Schenectady Engineering &*

Construction Co., 147 Fed. 868 (N.D.N.Y. 1906). The transfer of a case to another district is dealt with in Rule 116 and the transfer of an adversary proceeding to another district is governed by Rule 782. Section 43c of the Act governs the assignment of a referee from without the district.

Rule 103. Voluntary Petition.

A voluntary petition shall conform substantially to Official Form No. 1. An original and 2 copies of the petition shall be filed, unless a different number of copies is required by local rule.

Notes of Advisory Committee on Rules

Official Form No. 1 (Petition for Voluntary Bankruptcy) has been simplified and shortened but retains the essential features of the official form for a debtor's petition promulgated under former § 30 of the Act. Although no copy of a voluntary petition is required to be served on any adverse party, the rule continues the requirement of § 59c of the Act that the petition be filed in triplicate, but a local rule may modify the requirement. Only the original need be signed and verified, but the copies must be conformed to the original. See Rule 911(c). The petition must be filed with the clerk as provided in Rule 509(a). As provided in Rules 401 and 601, the filing of the petition acts as a stay of certain acts and proceedings against the bankrupt and his property.

Rule 104. Involuntary Petition.

(a) Form and Number.

An involuntary petition shall conform substantially to Official Form No. 9. An original and 2 copies of the petition shall be filed, unless additional copies are required by local rule.

(b) Participation in Act of Bankruptcy.

A creditor may not file or join in a petition alleging the commission of an act of bankruptcy other than the sixth act, if he consented to, participated in, or secured the commission of the act alleged. Notwithstanding the foregoing, if a creditor, without inducing it, participated in any general assignment, receivership, or other mode of adjustment or settlement of the affairs of the debtor and did not consent in writing thereto, or if he did so consent but without knowledge of facts which would constitute commission of the first, second, or third act of bankruptcy or which would be a bar to the discharge of the debtor in bankruptcy, he may nevertheless act as a petitioning creditor and may allege any act of bankruptcy including such assignment or receivership.

(c) Particularity of Allegations.

The facts constituting an act of bankruptcy shall be alleged with sufficient particularity to identify the transaction or occurrence.

(d) Transferor or Transferee of Claim.

A person who has transferred or acquired a claim for the purpose of commencing a bankruptcy case shall not be a qualified petitioner. A petitioning creditor who is a transferor or transferee of a claim, whether transferred unconditionally, for security, or otherwise, shall annex to the original and each of the 2 copies of the petition a copy of all documents evidencing the transfer, and a signed statement setting forth the consideration for and terms of the transfer and that the claim was not transferred for the purpose of commencing a bankruptcy case.

(e) Joinder of Petitioners After Filing.

Creditors other than the original petitioners may join in an involuntary petition at any time before its dismissal. If the answer to an involuntary petition filed by one or 2 creditors avers the existence of 12 or more creditors, the alleged bankrupt shall file with the answer a list of all his creditors with their addresses, a brief statement of the nature of their claims, and the amounts thereof. If it appears that there are 12 or more creditors as counted under § 59e of the Act, the court shall thereupon afford a reasonable opportunity for other creditors to join in the petition before a hearing is held thereon.

Notes of Advisory Committee on Rules

Subdivision (*a*). Official Form No. 9 (Creditors' Petition for Bankruptcy), prescribed for use by creditors as petitioners to have a debtor adjudged an involuntary bankrupt, is a revision of the official form for an involuntary petition promulgated under former § 30 of the Bankruptcy Act. A petition by fewer than all the general partners to have a partnership adjudged bankrupt is governed by Rule 105(b). The requirement of § 59c of the Act that the petition be filed in triplicate is continued, although under the bankruptcy docket and case reporting system in effect since January 1, 1963, the clerk of the United States district court typically sends to the referee all copies of the original petition and schedules. AOUSC Bulletin No. 506, dated Oct. 17, 1962, at p. 6. A local rule may require additional copies. One copy of the petition is served on the bankrupt pursuant to Rule 111, another is retained by the referee as part of the record of the case, and the third copy, together with the schedules and the statement of affairs, is for the trustee. If, as in some districts where there is a geographical separation of the clerk's and referee's offices, the judges require the clerk to retain a copy of the petition and schedules, the rule recognizes the validity of a variant local rule requiring an additional copy. Only the original need be signed and verified, but the copies must be conformed to the original. See Rule 911 (c). The petition must be filed with the clerk as provided in Rule 509(a). As provided in Rules 401 and 601, the filing of the petition acts as a stay of certain acts and proceedings against the bankrupt and his property.

Subdivision (*b*) is substantially a statement of the case law on the effect of participation by a petitioner in an act of bankruptcy, as supplemented by § 59h of the Act. See 3 Collier ¶ 59.39 (1964); MacLachlan, *Bankruptcy* § 60 (1956); Anno., 6 A.L.R.3d 476 (1966). The provision in the second sentence relieving a petitioner from the disqualification otherwise imposed by participation in an adjustment or settlement when such participation was without knowledge of the commission of one of the first three acts of bankruptcy may go beyond existing law, but it is supported by the rationale of the cases. See, *e.g.*, *In re Thomas*, 211 F.Supp. 187, 191 (D.Colo. 1962), aff'd sub nom. *Thomas v. Youngstown Sheet & Tube Co.*, 327 F.2d 667 (10th Cir.), cert. denied, 379 U.S. 827 (1964); *Dinerman v. Bowley & Travers, Inc.*, 301 F.2d 464, 467 (2d Cir. 1962); *In re Curtis*, 94 Fed. 630, 632 (7th Cir. 1899).

Subdivision (*c*) is a statement of case law. See 1 Collier ¶¶3.106, 3.207 (1961; MacLachlan, *Bankruptcy* § 59 (1956). Compare Rule 8(b) of the Federal Rules of Civil Procedure, requiring particularity in all averments of fraud, discussed in 2 Moore, *Federal Practice* ¶9.03 (2d ed. 1948). (Hereinafter citations to the Moore treaties will omit the title and reference to the edition but will include the date of the revision of the cited material.) The amenability of the allegations of a petition respecting the commission of an act of bankruptcy to an amendment that will relate back to the date of the filing of the petition is governed by the case law construing Rule 15(c) of the Federal Rules of Civil Procedure, which is made applicable to such an amendment by Rule 121. See *Dworsky v. Alanjay Bias Binding Corp.*, 182 F.2d 803, 805 (2d Cir. 1950); *Glint Factors, Inc. v. Schnapp*, 126 F.2 207 (2d Cir. 1942); 2 Collier ¶18.26 (1966); 3 Moore, ¶15.15[5] (1964).

Subdivision (d) is a revision of General Order 5(2). A signed statement of the petitioning creditor is made acceptable in lieu of the affidavit required by the general order, in line with the policy declared in Rule 911(b) and discussed in the Note accompanying that provision. The implication of the general order that a transfer for the purpose of commencing a bankruptcy case is a ground for disqualification of a party to the transfer as a petitioner is made explicit. Compare § 146(1) of the Act; Rule 23.1(1) of the Federal Rules of Civil Procedure. The subdivision requires disclosure of any transfer of his claim by the petitioner as well as a transfer to him and applies to transfers for security as well as unconditional transfers. *Cf. In re 69th & Crandon Bldg. Corp.*, 97 F.2d 392, 395 (7th Cir.), cert.denied, 305 U.S. 629 (1938), recognizing the right of a creditor to sign a bankruptcy petition notwithstanding a prior assignment of his claim for the purpose of security. This rule does not, however, quality the requirement of § 59b of the Act that a petitioning creditor must have a provable claim not contingent as to liability.

Subdivision (e) is derived from § 59d and f of the Act but does not include the provision of § 59d for notice by the court to all creditors. The interests of creditors are adequately protected by a provision requiring a reasonable opportunity for other creditors to join in the petition before the hearing is held. The list of creditors filed by the bankrupt affords a petitioner in such a case the information needed to enable him to give notice for the purpose of obtaining the copetitioners required to make the petition sufficient. The statutory requirement that the list be verified is eliminated pursuant to the policy expressed in Rule 911(b). It has been held that a creditor who desires to secure the administration of a debtor's estate in bankruptcy may properly solicit other creditors to join him in filing a petition. *In re Kootenai Motor Co.*, 41 F.2d 403 (D.Idaho 1930); *In re Smith*, 176 Fed. 426, 435 (N.D.N.Y. 1910). After a reasonable opportunity has been afforded for other creditors to join in an involuntary petition, the hearing on the petition should be held without further delay. The last sentence of § 59d is omitted from the rule as unnecessary.

Rule 105. Partnership Bankruptcy.

(a) Voluntary Petition.

A voluntary petition may be filed by all the general partners on behalf of the partnership.

(b) Partner's Petition Against Partnership.

A petition may be filed by fewer than all the general partners to have a partnership adjudged bankrupt under § 5b of the Act. An original and 2 copies of the petition shall be filed under this subdivision, but if more than one general partner does not join in the petition, an additional copy for each such partner shall be filed. The petition for adjudication of the partnership may be contested by any general partner (or alleged general partner) who is not a petitioner.

(c) Involuntary Petition by Creditors.

An involuntary petition may be filed by creditors against a partnership. Within 5 days after the filing, the petitioning creditors shall cause a copy of the petition to be sent by certified mail to the last known address of or to be delivered to, each general partner who has not been served.

(d) Petition When All General Partners Are Adjudicated.

If all the general partners of a partnership are adjudged bankrupt, any party in interest may file a petition in any court in which a partner's bankruptcy case is pending to have the partnership adjudged bankrupt.

Notes of Advisory Committee on Rules

This rule is derived from subdivisions a, b, and i of § 5 of the Act and authorizes 4 types of petitions to have a partnership adjudged bankrupt. The joint petitions authorized by § 5 of the Act are abolished by this rule. The statutory provisions for this kind of petition have caused confusion as to the filing fees chargeable and the manner of preparing schedules and statements of affairs. The advantages of joint administration of partnership and partners' estate where that is feasible are obtainable under Rule 117. Subdivision (d) is an elaboration of the first sentence of § 51 of the Act. See Kennedy, *A New Deal* for Partnership Bankruptcy, 60 Col. L. Rev. 610, 646–49 (1960). The duty to prepare and file schedules and the statement of affairs for the partnership adjudicated on a petition filed under this rule rests on the general partners. See Rule 108(c).

Rule 106. Caption of Petition.

The caption of every petition shall comply with Rule 904(b). In addition the title of the case as set forth in the caption shall include the name of the bankrupt and all other names used by him within 6 years before the filing of the petition. If the petition is not filed by the bankrupt, the petitioners shall include such other names according to their best information.

Notes of Advisory Committee on Rules

The second and third sentences of this rule adopt a feature found in some local rules. See, *e.g.*, N.D. Ill. Bankr. R. 5(B)(2); S.D. & E.D. N.Y. Bankr. R. 1(b). Additional names of the bankrupt are also required to appear in the caption of each notice to creditors. See Rule 203(i).

Rule 107. Filing Fees.

(a) General Requirement.

Except as otherwise provided in subdivision (b), every petition shall be accompanied by the prescribed filing fees.

(b) Payment of Filing Fees in Installments.

(1) *Application for Permission to Pay Filing Fees in Installments.* A voluntary petition shall be accepted for filing by the clerk of the district court if accompanied by an application signed by the petitioner for permission to pay the filing fees in installments. The application shall state that the applicant is unable to pay the filing fees except in installments, the proposed terms of such installment payments, and that the applicant has paid no money and transferred no property to his attorney for services in connection with the case. The application shall be filed in duplicate, one copy for the clerk and one for the bankruptcy judge.

(2) *Action on Application.* At or prior to the first meeting of creditors, the court after a hearing may make an order permitting the payment of the filing fees in installments to the clerk of the district court, and fixing the number of installments and the amount and date of payment of each installment. The number of installments permitted shall not exceed 4, and the final installment shall be payable not later than 4 months after the filing of the petition. For cause shown, however, the court may extend the time for payment of any installment to a date not later than 6 months after the date of filing of the petition.

(3) *Postponement of Attorney's Fees.* Filing fees must be paid in full before the bankrupt may pay his attorney for services in connection with the case.

Notes of Advisory Committee on Rules

Subdivision (a). Filing fees for bankruptcy cases are prescribed by §§ 40c(1), 48c, and 52a of the Act. Additional fees and charges may be prescribed in accordance with schedules and regulations approved by the Judicial Conference of the United States pursuant to § 40c(2) and (3) of the Act and 28 U.S.C. § 1914(b).

Subdivision (*b*) is a revision of paragraph (4) of former General Order 35. The payment of filing fees in installments pursuant to the provisions of this general order has been explicitly authorized by §§ 40c(1), 48c, and 52a of the Act. The verification requirement imposed by the general order has been eliminated in conformity with the policy of Rule 11 of the Federal Rules of Civil Procedure. The subdivision allows the court to act on the application in advance of the first meeting or at that meeting. Reference in General Order 35(4) to "any adjournment thereof" is omitted from the rule as unnecessary since an adjournment continues the first meeting. The administrative cost of installments in excess of 4 is disproportionate to the benefits conferred, and prolongation of the period of payment beyond 6 months after bankruptcy causes undesirable delays in administration. Paragraph (2) accordingly imposes a maximum of 4 on the number of installments and reduces the period of installment payments allowable on an original application from 6 to 4 months. Only in extraordinary cases should it be necessary to give an applicant an extension beyond the 4 months allowable on the original application. The requirement of paragraph (3) that filing fees be paid in full before the bankrupt shall pay his attorney for services in connection with the bankruptcy case codifies the rule declare in *In re Latham*, 271 Fed. 538 (S.D.N.Y. 1921), and *In re Darr*, 232 Fed. 415 (N.D. Cal. 1916). This has also been a local rule in force in a number of districts. *E.g.*, N.D.Ill. Bankr. Rule 6B; D.Ore. Bankr. Rule 83(c); E.D.Va.Bankr. Rule 7(b).

Rule 108. Schedules and Statement of Affairs.

(a) Schedules and Statement of Affairs.

The bankrupt shall file with the court schedules of all his debts and all his property and a statement of his affairs, prepared by him in the manner prescribed by Official Forms No. 6 and either No. 7 or No. 8, whichever is appropriate. The number of copies of the schedules and statement shall correspond to the number of copies of the petition required by these rules.

(b) Time Limits.

Except as otherwise provided herein, the schedules and statement shall be filed with the petition by a voluntary bankrupt and within 10 days after adjudication by an involuntary bankrupt or by a partnership adjudicated on other than a voluntary petition. A voluntary petition shall nevertheless be accepted by the clerk if accompanied by a list of all the bankrupt's creditors and their addresses, and the schedules and statement may be filed within 10 days thereafter in such case. On application the court may grant up to 10 additional days for the filing of schedules and the statement of affairs; any further extension may be granted only for cause shown and on such notice as the court may direct.

(c) Partnership and Partners.

If the bankrupt is a partnership, the general partners shall prepare and file the schedules of the debts and property and statement of affairs of the partnership. Every general partner not adjudicated shall file a statement of his assets and liabilities with the trustee of the partnership within 10 days after qualification by the trustee or within such further time as may be allowed by the court for cause shown.

(d) Preparation of Schedules or Statement of Affairs on Default by Bankrupt.

If the schedules or statement of affairs is not prepared and filed as required by this rule, the court may order the receiver, trustee, a petitioning creditor, or other party in interest to prepare and file any of these papers within such time as the court shall fix.

(e) Interests Acquired or Arising After Bankruptcy.

Within 10 days after the information comes to his knowledge or within such further time as the court may allow, the bankrupt shall file a supplemental schedule showing the facts regarding (1) any property that vests in him by bequest, devise, or inheritance within 6 months after bankruptcy; (2) any property in which the bankrupt had an estate or interest by the entirety on the date of bankruptcy and which became transferable in whole or in part solely by the bankrupt within 6 months after bankruptcy; and (3) any interests in real property that were nonassignable prior to bankruptcy and that, within 6 months thereafter, became assignable interests or estates, or gave rise to powers in the bankrupt to acquire assignable interests or estates. If any of the property or interests required to be reported under this subdivision is claimed by the bankrupt as exempt, he shall claim his exemption in the supplemental schedule. The study to file a supplemental schedule in accordance with this subdivision continues notwithstanding the closing of the case before the duty is or can be performed.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (*a*). This rule is an elaboration of § 7a(8) and (9) of the Act. The list of creditors required by § 7a (8) has been referred to in Schedule A of Official Form No. 6 as the schedule of debts, and the latter designation is employed in the rules and official forms as revised. The cited clauses of § 7a have required the schedule of property, list of creditors, and statement of affairs to be filed in triplicate, and § 59c of the Act has required petitions to be filed in the same number. Rules 103, 104, and 105 require an original and 2 copies of each petition to be filed, but if more than one general partner does not join in a petition filed under Rule 105(b), an additional copy for each such partner must be filed. Each required copy of a petition must be accompanied by a copy of the schedules and statement of affairs. Only the original need be signed and verified, but the copies should be conformed to the original. See Rule 911(c).

Subdivision (*b*) retains the requirement of § 7a(8) of the Act that the schedules of property and debts be filed with any voluntary petition unless a list of creditors and their addresses accompanies the petition. Whereas the latter option is available to the bankrupt under the Act only if the court for cause shown gives him further time for filing the schedules, however, the rule allows the bankrupt who submits a creditor list with his petition 10 more days for the filing of complete schedules without the necessity of applying for and obtaining an extension from the court. A voluntary bankrupt frequently has an urgent need for relief available under the Act, and allowing him up to 10 days in which to provide the information required on the schedules and in the statement of affairs will be less productive of administrative inconvenience and delay than the present requirement that an extension be granted only on application. A bankrupt adjudicated on an involuntary petition and a partnership adjudicated on a petition of less than all the partners under Rule 105 (b) or on a petition filed under Rule 105 (d) when all the partners have been adjudicated are given 10 days after the adjudication in which to file the schedules. This is 5 days more than § 7a(8) now allows the involuntary bankrupt, but the rule should cut down the number of requests by involuntary bankrupts for an extension. The provision fixing the time limits on the filing of schedules and the statement of affairs by a partnership adjudicated on a petition by less than all the partners or when all of them have been adjudicated fills a lacuna in the law. Extensions of time beyond the 10-day periods allowed by the first and second sentences of subdivision (b) and beyond the discretionary extension of up to 10 additional days authorized by the first clause of the last sentence of subdivision (b) are governed by the last clause of that sentence and by Rule 906(b).

Submission of the statement of affairs, which § 7a(9) of the Act permits to be filed as late as 5 days before the first meeting of creditors, is made subject by subdivision (b) to the same time requirements as apply to the filing of the schedules of property and debts. Early disclosure of the information called for in the statement is no less needful and helpful for expeditious administration than is prompt filing of the schedules, and ordinarily there is no reason why the schedules and the statement should not be submitted at the same time.

Subdivision (c), prescribing who shall prepare and file schedules and the statement of affairs whenever a partnership is adjudicated, is new. While the duty to prepare and file the schedules and statement of affairs of a partnership attaches to all the general partners, one partner may sign these papers on behalf of the partnership. See, *e.g.*, the form of the oath on behalf of a partnership at the foot of Official Form No. 6. The second sentence of the subdivision embodies a rule frequently stated and applied by the courts. See *Armstong v. Fisher*, 224 Fed. 97 (8th Cir. 1915); *Dickas v. Barnes*, 140 Fed. 849 (6th Cir. 1905); *In re Ira Haupt & Co.*, 240 F. Supp. 369, 371–72 (S.D.N.Y. 1965): *In re Sugar Valley Gin Co.*, 292 Fed. 508 (N.D.Ga. 1923); Warren, *Corporate Advantages Without Incorporation* 285–86 (1929); *cf. Carter v. Whisler*, 275 Fed. 743, 747 8th Cir.) (1921). Most of the cases cited above were decided while former General Order VIII was in effect, and that general order required a nonadjudicated member of an adjudicated partnership to file a schedule of his debts and an inventory of his property in the same manner as if he had been individually adjudicated. The general order was revoked in 1925, 268 U.S. 712, because it authorized the adjudication of a partnership on the petition of less than all the partners. The Supreme Court had ruled in *Meek v. Centre County Banking Co.*, 268 U.S. 426 (1925), that since the Act as then written did not authorize such a petition, the general order was in excess of the rule-making power granted the Court by § 30 of the Act. A rule requiring a member of a duly adjudicated partnership to file a statement of his debts and property appears to be well within the rule-making power granted by 28 U.S.C. § 2075.

Subdivision (d) is a substantial revision of General Order 9. The general order deals only with the situation when in involuntary bankrupt is absent or cannot be found and in such case imposes the duty of filing a list of creditors and their addresses on petitioning creditors. The rule provides for any case in which the schedules or statement of affairs is not filed as required by giving the court a choice of persons and discretion as to the time for getting these documents prepared and filed. *Cf.* § 39a(2) of the Act; and see 1A Collier ¶7.10 (1960), for a discussion of the practice that has developed for handling such situations. A trustee, receiver, or other party ordered by the court to file schedules or a statement of affairs may request the court to authorize the employment of an assistant in connection with the preparation of these papers. Employment of an accountant by the trustee or receiver must be approved by the court in accordance with Rule 215, and the accountant's compensation would be governed by Rule 219 and §§ 62a(1) and 64a(1) of the Act.

Subdivision (e), which is new, provides a procedure for getting information as to any postbankruptcy acquisition of the bankrupt that passes to the trustee as part of the estate. See 4A Collier ¶¶ 70.17[8], 70.27, 70.37 (1967). A case presenting no controversy or complication may be closed before the end of the 6-month period during which the bankrupt is subject to the duty of disclosure imposed by this subdivision. *Cf.* 1 Collier 280 (1968). The supplemental schedule should be filed in the same place and manner as if the case had not been closed. The case need not be reopened in order for the schedule to be filed but the filing (or failure to file) may be the precipitating cause for an order to reopen.

Rule 109. Verification of Petitions and Accompanying Papers.

All petitions, schedules, statements of affairs, and amendments thereto shall be verified.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule combines requirements prescribed by §§ 7a(8) and 18c of the Act. Only the original need be signed and verified, but the copies must be conformed to the original See Rule 911(c).

Rule 110. Amendments of Voluntary Petitions, Schedules, and Statements of Affairs.

A voluntary petition, schedule, or statement of affairs may be amended as a matter of course at any time before the case is closed. The court may, on application or motion of any party in interest or on its own initiative, order any voluntary petition, schedule, or statement of affairs to be amended. Every amendment under this rule shall be filed in the same number as required of the original paper, and the court shall give notice of the amendment to such persons as it may designate.

NOTES OF ADVISORY COMMITTEE ON RULES

General Order 11, from which this rule is principally derived, has required an application for leave to amend a petition or schedule. While the first sentence of this rule adopts a permissive approach to amendment of a voluntary petition, schedule, or statement of affairs, it contemplates that every amendment shall be brought to the attention of the court so that it may determine who, if anyone, should be notified of the amendment. A notice to the trustee is appropriate whenever the debtor amends this schedule of property. If additional property is claimed as exempt by the amendment, the trustee must act thereon in accordance with Rule 403.

The second sentence of the rule is adapted from § 39a(3) of the Act. An amendment will ordinarily be filed with the referee. See Rule 509. If a copy of the petition, schedule, or statement being amended is retained by the clerk, a copy of each amendment should be transmitted by the referee to the clerk. If a schedule is amended to include an additional creditor, the effect on the dischargeability of the creditor's claim is governed by the provisions of § 17 of the Act (see particularly § 17a(3)).

Rule 111. Service of Petition and Process.

Upon the filing of an involuntary petition, the clerk of the district court shall forthwith issue a summons for service on the bankrupt. Upon the filing of a partner's petition against a partnership under Rule 105(b), the clerk shall forthwith issue a summons for service upon all general partners who are not petitioners. The summons shall conform substantially to Official Form No. 10 and a copy shall be served with a copy of the petition in the manner provided for service of a summons, complaint, and notice of trial by Rules 704(b), (c), or (i). If service cannot be made as provided in the preceding sentence, the court may order the summons and petition to be served by mailing copies thereof to the last known address, if any, and by at least one publication in such manner and form as the court may direct. The summons and petition may be served anywhere. The provisions of Rule 704(e), (g), and (h) apply when service is made or attempted under this rule.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is a revision of § 18a of the Act. The substitution of the summons for the writ of subpoena as the process to be served on the bankrupt conforms the usage in bankruptcy to that prevailing generally in civil litigation in federal courts. See 2 Collier ¶ 18.30 (1966). The modes of services prescribed by the rule are personal or by mail, when service can be affected in one of these ways in the United States. Service by either of these modes shall be made in the manner prescribed for personal service or service by mail in adversary proceedings in bankruptcy cases by Rule 704(b) and (c). If service must be made in a foreign country, the mode of service prescribed is one of those referred to in Rule 704(i), which incorporates Rule 4(i) of the Federal Rules of Civil Procedure.

When none of the 3 methods referred to in Rule 704(b), (c), and (i) can be utilized, service by publication coupled with mailing to the last known address is authorized. *Cf.* Rule 704(d)(2). The court determines the form and manner of the publication, as provided in Rule 908. The publication need not set out the petition or the order directing service by publication. In order to apprise the bankrupt fairly, however, the publication should include all the information required to be in the summons by Official Form No. 10 and a notice indicating how service is being effected and how a copy of the petition may be obtained. Section 18a of the Act has provided that when personal service on the bankrupt cannot be had, service by publication may be made in the manner provided for suits to enforce a legal or equitable lien in courts of the United States. The procedure for such suits is that prescribed by 28 U.S.C. § 1655, which includes a provision authorizing the vacation of a judgment at any time within a year after its entry if the defendant was not personally notified. As pointed out in the Note accompanying Rule 924, cases relying on this provision to vacate adjudications of bankruptcy entered without personal notice to the bankrupt are inapplicable to adjudications under these rules.

There are no territorial limits on the service authorized by this rule. Service on a bankrupt under § 18a of the Act has likewise not been limited by territorial boundaries when personal service within the state in which the court of bankruptcy sits has proved impracticable, *United States v. Kramer*, 279 F.2d 754, 83 A.L.R.2d 698 (3rd Cir.), cert. denied, 364 U.S. 879 (1960); *Bookey v. King*, 236 F.2d 871, 877 (9th Cir. 1956); *Benitez v. Anciani*, 127 F.2d 121, 126 (1st Cir.), cert. denied, 317 U.S. 699 (1942); *cf. Stegeman v. United States*, 425 F.2d 984, 987 n. 4 (9th Cir. 1970); *Sidney L. Bauman Diamond Co. v. Hart*, 192 Fed. 498, 501–02 (5th Cir. 1911); *In re Berthoud*, 231 Fed. 529, 532–33 (S.D.N.Y.), appeal dismissed, 238 Fed. 797 (2d Cir. 1916). There must of course be a basis for jurisdiction of the bankrupt or his property in order for the court to adjudicate his bankruptcy and to administer his estate. Although Rule 116(a), relates to venue rather than jurisdiction, the court would have no jurisdiction to act if none of the elements to be considered in the choice of venue could be found in the United States, *cf.* § 2a(1) of the Act; Seligson & King, *Jurisdiction and Venue in Bankruptcy*, 36 Ref. J. 36 (1962); Comment, 35 N.C.L.Rev. 476, 478 (1957).

Subdivisions (e), (g), and (h) of Rule 704 govern time and proof of service, the effect of errors in service or proof thereof, and amendment of process or of proof of service.

Rule 112. Responsive Pleading or Motion.

The alleged bankrupt in an involuntary petition, or, in the case of a petition against a partnership under subdivision (b) or (c) of Rule 105, any general partner (or alleged general partner) who is not a petitioner, may contest the petition. Rule 12 of the Federal Rules of Civil Procedure applies to the making of a defense or objection to the petition, except that an answer or a motion permitted under Rule 12(b), (e), or (f) of the Federal Rules of Civil Procedure shall be served and filed within 15 days after the issuance of the summons, but if service is made by publication upon an alleged bankrupt or partner not an inhabitant of nor found within the state in which the district court is held, the court shall prescribe the time for such service and filing of the response. The service of a motion permitted under Rule 12 of the Federal Rules of Civil Procedure shall have the effect prescribed by Rule 712(a) on the time allowed for serving an answer to the petition, but any motion or answer served on the petitioner must be filed with the court no later than the last day allowed for service of the motion or the answer, as the case may be. The answer to a petition may include the statement of a claim against a petitioning creditor only for the purpose of defeating the petition. No other responsive pleadings shall be allowed, except that the court may order a reply to an answer and prescribe the time for it to be served and filed.

NOTES OF ADVISORY COMMITTEE ON RULES

The first sentence of this rule is derived from § 18b of the Act. A petition filed by fewer than all the general partners under Rule 105(b) to have the partnership adjudged bankrupt is referred to as a petition against the partnership because of the adversary character of the proceeding it commences. *Cf.* 2 Collier ¶ 18.38[2.1] (1966). One who denies an allegation of his membership in the firm is nevertheless recognized as a party entitled to contest a petition filed against a partnership under either subdivision (b) or (c) of Rule 105 in view of the possible consequences to him of an adjudication of the entity alleged to include him as a member. *Francis v. McNeal*, 228 U.S. 695 (1913); *Manson v. Williams*, 213 U.S. 453 (1909); *Carter v. Whisler*, 275 Fed. 743, 746 (8th Cir. 1921). The rules preserves the features of the Act permitting no response to a voluntary petition and permitting no response by creditors to an involuntary petition or petition against a partnership under Rule 105(b); nor is any response permitted to a petition filed under Rule 105(d).

Rule 12 of the Federal Rules of Civil Procedure has been looked to by the courts as prescribing the mode of making a defense or objection to a petition in bankruptcy. See *Fada of New York, Inc. v. Organization Service Co., Inc.*, 125 F.2d 120, (2d Cir. 1942); *In re McDougald*, 17 F.R D. 2, 5 W.D.Ark. 1955); *In re Miller*, 6 Fed.Rules Serv. 12f.26, Case No. 1 (N.D.Ohio 1942); *Tatum v. Acadian Production Corp. of La.*, 35 F.Supp. 40, 50 (E.D.La. 1940); 2 Collier, *supra* at 134–40. As pointed out in the Note accompanying Rule 915 an objection that an alleged bankrupt is neither entitled to the benefits of the Act nor amenable to adjudication as an involuntary bankrupt goes to jurisdiction of the subject matter and may be made at any time consistently with Rule 12(h)(3) of the Federal Rules of Civil Procedure. Nothing in this rule recognizes standing in a creditor or any other person not authorized to contest a petition to raise an objection that a person eligible to file a voluntary petition cannot be adjudicated on an involuntary petition. See Seligson & King, *Jurisdiction and Venue in Bankruptcy*, 36 Ref.J.36,38–40(1962).

As Collier has pointed out, "the mechanics of the provisions in § 18a and b relating to time for appearance and pleading are unnecessarily confusing. . . . These results . . . [giving the respondent at least 10 days after service without permitting undue extension of the period for appearance and pleading] could be reached more expeditiously and with less confusion by amending § 18 so as to adapt the procedure provided for in Federal Rule 12(a). . . ." 2 Collier, *supra* at 103–04. The time normally allowed for the service and filing of an answer or motion under Rule 112 runs from the date of the issuance of the summons to the bankrupt. *Cf.* Rule 712(a), fixing the time for serving an answer to a complaint commencing an adversary proceeding by reference to the issuance of the summons that accompanies it. Service of the summons and petition will ordinarily be made by mail under Rule 111 and must be made within 3 days of the issuance of the summons under Rule 704(e), which governs the time of service. The 15 days normally allowed by this rule for serving the response is thus comparable to the period that has been prescribed by § 18a and b of the Act. When service is made by publication, the court should fix the time for service and filing of the response in the light of all the circumstances so as to afford a fair opportunity to the bankrupt to enter a defense or objection without unduly delaying the hearing on the petition. *Cf.* Rule 12(a) of the Federal Rules of Civil Procedure.

As provided in the third sentence of the rule, the timely service of a motion permitted by Rule 12(b), (c), (e), (f), or (h) of the Federal Rules of Civil Procedure alters the time within which an answer must be filed. If the court denies a motion or postpones its disposition until trial on the merits, the answer must be served within 5 day after notice of the court's action. If the court grants a motion for a more definite statement, the answer may be served any time within 5 days after the service of the more definite statement.

As provided in Rule 121 many of the rules governing adversary proceedings apply to proceedings on a contested petition unless the court otherwise directs. The specific provisions of this Rule 112 rather than Rule 705(b), however, govern the filing of an anwer or motion responsive to a petition. The rules of Part VII are adaptations of the corresponding Federal Rules of Civil Procedure, and the effect of Bankruptcy Rule 121 is thus to make the provisions of Civil Rules 5(a), 8, 9, 15, and 56 *inter alia* generally applicable to the making of defenses and objections to the petition. Rule 121, follows prior law and practice in this respect. See 2 Collier, *supra* ¶¶ 18.39–18.41.

The next to the last sentence adopts the position taken in many cases that an affirmative judgment against a petitioning creditor cannot be sought by a counterclaim filed in an answer to a petition in a bankruptcy case. See, *e.g., Georgia Jewelers, Inc. v. Bulova Watch Co.*, 302 F.2d 362, 369–70 (5th Cir. 1962); *Associated Electronic Supply Co. of Omaha v. C.B.S. Electronic Sales Corp.*, 288 F.2d 683, 684–85 (8th Cir. 1961). The sentence follows *Harris v. Capehart-Farnsworth Corp.*, 225 F.2d 268 (8th Cir. 1955), in permitting the alleged bankrupt to challenge the standing of a petitioner by filing a counterclaim against him. See also *In re Automatic Typewriter & Service Co.*, 271 Fed. 1, 4 (2d Cir. 1921), and *In re Paige*, 99 Fed. 538 (N.D. Ohio 1899), recognizing the propriety of the bankrupt's alleging a counterclaim in an answer that denies his insolvency. The sentence does not foreclose the court from rejecting a counterclaim that cannot be determined without unduly delaying the decision upon the adjudication. See *In re Bichel Optical Laboratories, Inc.*, 299 F.Supp. 545, 550 (D.Minn. 1969). The last sentence makes it clear that no reply needs to be made to an answer, including one asserting a counterclaim, unless the court thinks one would be helpful and orders it.

Rule 113. Affirmative Defense of Solvency.

If a petition alleges the commission of the first act of bankruptcy, the alleged bankrupt shall plead and have the burden of proving the defense of solvency at the date of bankruptcy.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule implements the provision in § 3c of the Act that solvency shall be a defense to the commission of the first act of bankruptcy by prescribing how the defense shall be pleaded and proved.

Rule 114. Examination of Bankrupt on Issue of Insolvency or Inability to Pay Debts as They Mature.

Whenever a petition filed under Rule 104 alleges the commission of the second, third, or fifth act of bankruptcy or a petition is filed under Rule 105(b), and the alleged bankrupt denies the allegation of insolvency or inability to pay debts as they mature, the alleged bankrupt shall appear in court at the hearing, and prior thereto if ordered by the court, with books, papers, and accounts, and submit to an examination as to all matters bearing on the issue of insolvency or inability to pay debts as they mature. If the alleged bankrupt fails to appear or submit to an examination, the court on motion may make such orders in regard to the failure as are just, including those specified in paragraphs (A), (B), and (C), of Rule 37(b)(2) of the Federal Rules of Civil Procedure. The examination provided by this rule is not exclusive of the procedures available under Rules 121 and 205.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is derived from § 3d of the Act but goes beyond it by making 3 of the sanctions provided by Rule 37 of the Federal Rules of Civil Procedure for failure to obey an order to provide or permit discovery available against an alleged bankrupt who fails to comply with the duty imposed by the rule. The rule thus departs from the holding in *In re Richards Discount Jewelry, Inc.*, 303 F.Supp. 517, 518 (S.D.N.Y. 1969), and *In re Shulund*, 210 F.Supp. 195, 199–200 (D. Mont. 1962), that § 3d of the Act is inconsistent with Rule 37 of the Federal Rules of Civil Procedure and prescribes the only consequence for failure of the bankrupt to appear with his papers and submit to an examination on the issue of insolvency or inability to pay debts as they mature.

Rule 121 makes applicable in proceedings relating to a contested petition the rules governing discovery and deposition in adversary proceedings, which are adaptations of Rules 26–37 of the Federal Rules of Civil Procedure. Rule 205 is an adaptation of § 21a of the Act. The last sentence of this Rule 114 eliminates doubts as to the availability to petitioning creditors of the discovery procedures afforded to litigants generally in civil practice, and of an examination of the bankrupt and others in accordance with the practice that developed under § 21a of the Act. See 1 Collier ¶3.208[2] (1961); 2 *id.* ¶¶18.10[1.2], 18.41[7] (1966); 2 *id.* ¶21.08 (1964).

Rule 115. Hearing and Disposition of Petition.

(a) Contested Petition.

The court shall determine the issues of a contested petition at the earliest practicable time and adjudicate the debtor a bankrupt, dismiss the case, or enter such other order as may be appropriate.

(b) Jury Trial.

(1) An alleged bankrupt may, at or before the time within which an answer may be filed, demand a trial by jury of any issue triable of right by a jury under § 19a of the Act, by serving upon the petitioners a demand therefor in writing and filing it. Such demand may be indorsed upon the answer. If the demand specifies that a district judge conduct the trial or if a local rule of court so provides, the trial shall be placed on the calendar of the district court as a jury action; otherwise the referee shall conduct the jury trial. The failure of a party to serve and file a demand in accordance with this rule constitutes a waiver by him of trial by jury or of a jury trial before a district judge, as the case may be.

(2) When trial by jury has been demanded in accordance with this rule, the trial of all issues so demanded shall be by jury unless the alleged bankrupt, by a writing filed with the court or by an oral statement made in open court and entered in the record, consents to trial by the court sitting without a jury. A trial with an advisory jury or a jury trial conducted as of right on consent of the parties may be ordered in accordance with Rule 39(c) of the Federal Rules of Civil Procedure.

(3) When issues triable of right by jury have been placed on the district court calendar as provided in paragraph (1) of this subdivision, the district judge may order the trial before him of any other issues presented by the pleadings in the interest of expediting the court's business or for other good cause.

(4) Except as provided in subdivision (d) of this rule, Rules 47–51 of the Federal Rules of Civil Procedure apply to a jury trial conducted under this subdivision.

(c) Default.

If no pleading or other defense to a petition is filed within the time provided by these rules, the court shall on the next day, or as soon thereafter as practicable, make the adjudication or make such other order as may be appropriate.

(d) Adjudication.

An adjudication shall conform substantially to Official Form No. 11 and shall be entered in the referee's docket or the civil docket of the district court, as the case may be.

(e) Award of Costs.

When a case commenced by the filing of a petition against any person pursuant to Rule 104(a) or Rule 105(b) or (c) is dismissed or withdrawn, the court on reasonable notice to the petitioner or petitioners may award to the prevailing party the same costs that are allowed to a prevailing party in a civil action and reasonable counsel fees, and shall award any other sums required by the Act.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (a) is a revision of § 18d of the Act.

Subdivision (b) of this rule preserves the right of trial by jury given by § 19a of the Act but recognizes that the alleged bankrupt may accept a jury trial before the referee if he does not specifically demand such a trial before the district judge and if a local rule does not prohibit a jury trial before a referee. The subdivision is an adaptation of Rules 38(b) and (d) and 39(a) and (c) of the Federal Rules of Civil Procedure. To preserve his right to a jury trial and, absent a local rule requiring every such trial to be on the district court's calendar, his right to a jury trial before a district judge, the alleged bankrupt must not only serve but file his demand within the time limits prescribed by this rule. The place of filing is governed by Rule 509. A case ordinarily remains with a referee after automatic reference in accordance with Rule 102(a) unless there is a demand for jury trial before a district judge under this rule or there is a transfer or revocation of a reference as provided in Rule 102(b). Paagraph (3) of subdivision (b) represents a modest extension of the district judge's authority in respect of a bankruptcy case to permit the exercise of his discretion in appropriate cases to minimize the unseemly consequences of fragmentation of the trial of issues arising on a petition.

Except as otherwise provided in this and other rules in Part I and subject to the authority of the court to direct otherwise, the rules in Part VII that govern adversary proceedings apply directly, or may be made applicable by direction of the court, to the proceedings on a contested petition. See Rule 121. When there is a jury trial, the provisions governing jurors, verdicts, instructions to juries, and related matters in Rules 47–51 of the Federal Rules of Civil Procedure apply, as provided in paragraph (4) of subdivision (b) of this rule. For the purposes of applying Civil Rule 49(b), however, subdivision (d) of this rule (rather than Rule 58, to which Civil Rule 49(b) refers) governs the entry of the adjudication.

Subdivision (c) is derived from § 18e of the Act. If adjudication is not made on default, dismissal will ordinarily be the appropriate disposition as provided in § 18e, but the court may find reason to postpone definitive action of either kind pending particular developments. See, *e.g.*, §§ 325, 425, and 625 of the Act. For good cause shown an adjudication on default may be set aside in accordance with Rule 924.

Subdivision (d). When an adjudication is made by the referee, it shall be entered on the referee's docket kept by him as provided in Rule 504(a). When the adjudication is by the district judge, it shall be entered in the civil docket kept by the clerk as provided in Rule 79(a) of the Federal Rules of Civil Procedure.

Subdivision (e). General authority for an award of costs to a prevailing party is found in § 2a(18) of the Act. General Order 34 has provided in its first clause for the recovery by a petitioning creditor of costs when adjudication is made on a contested involuntary petition. This provision was effectively superseded, however, by the 1962 amendment of § 64a(1) of the Bankruptcy Act, which explicitly authorizes allowance, as an administrative expense entitled to first priority, of "the reasonable costs and expenses incurred, or the reasonable disbursements made," by petitioning creditors, "including but not limited to compensation of accountants and appraisers employed by them." The first clause of General Order 34 is accordingly not carried over into this rule. Subdivision (e) embodies the substance of the last clause of General Order 34, authorizing recovery of costs by the debtor in the event of dismissal, and recognizes the right of the alleged bankrupt under § 69b of the Act to costs, counsel fees, and idemnification for expenses and damages caused by the action of a receiver or marshal in taking or holding his property. An award may be made under this subdivision in the event of a dismissal on account of a withdrawal of the petition as well as by reason of an involuntary dismissal.

Rule 116. Venue and Transfer.

(a) Proper Venue.

(1) *Natural Person.* A petition by or against a natural person may be filed in the district where the bankrupt has had his principal place of business, residence, or domicile for the preceding 6 months or for a longer portion thereof than in any other district. A petition by or against a natural person who has had no principal place of business, residence, or domicile within the United States during the preceding 6 months may be filed in a district wherein he has property.

(2) *Corporation or Partnership.* A petition by or against a corporation or partnership may be filed in the district (A) where the bankrupt has had its principal place of business or its principal assets for the preceding 6 months or for a longer portion thereof than in any other district; or (B) if there is no such district, in any district where the bankrupt has property.

(3) *Partner with Partnership or Copartner.* Notwithstanding the foregoing: (A) a petition commencing a bankruptcy case may be filed by or against any general partner in a district where a petition under the Act by or against a partnership is pending; (B) a petition commencing a bankruptcy case may be filed by or against a partnership or by or against any other general partner or by or against any combination of the partnership and the general partners in a district where a petition under the Act by or against a general partner is pending.

(4) *Affiliate.* Notwithstanding the foregoing, a petition commencing a bankruptcy case may be filed by or against an affiliate of the bankrupt in a district where a petition under the Act by or against the bankrupt is pending.

(b) Transfer of Cases; Dismissal or Retention When Venue Improper.

(1) *When Venue Proper.* Although a petition is filed in accordance with subdivision (a) of this rule, court may, after hearing on notice to the petitioner or petitioners and such other persons as it may direct in the interest of justice and for the convenience of the parties, transfer the case to any other district.

The transfer may be ordered at or before the first meeting of creditors either on the court's own initiative or on motion of a party in interest but thereafter only on a timely motion.

(2) *When Venue Improper.* If a petition is filed in a wrong district, the court may, after hearing on notice to the petitioner or petitioners and such other persons as it may direct, dismiss the case or, in the interest of justice and for the convenience of the parties, retain the case or transfer it to any other district. Such an order may be made at or before the first meeting of creditors either on the court's own initiative or on motion of a party in interest but thereafter only on a timely motion. Notwithstanding the foregoing, the court may without a hearing retain a case filed in a wrong district if no objection is raised.

(c) Procedure When Petitions Involving the Same Bankrupt or Related Bankrupts Are Filed in Different Courts.

If petitions commencing bankruptcy cases or a bankruptcy case and any other case under the Act are filed in different districts by or against (1) the same bankrupt, or (2) a partnership and one or more of its general partners, or (3) 2 or more general partners, or (4) a bankrupt and an affiliate, the court in which the first petition is filed shall, after hearing on motion and notice to the petitioners and such other persons as the court may designate, determine the court or courts in which the case or cases should proceed in the interest of justice and for the convenience of the parties. The proceedings on the other petitions shall be stayed by the courts in which such petitions have been filed until such determination is made. Thereafter all the courts in which petitions have been filed shall proceed in accordance with the determination.

(d) Reference of Transferred Cases.

A case transferred under this rule shall, in accordance with Rule 102(a), be referred by the clerk of the district court to which it has been transferred.

Notes of Advisory Committee on Rules

Subdivision (a). Paragraphs (1) and (2) of subdivision (a) of this rule are a revision of § 2a(1) of the Act. Although the statutory provision is phrased in terms of jurisdiction, it is now settled that it relates primarily to venue insofar as it speaks of principal place of business, residence, or domicile. *Bass* v. *Hutchins*, 417 F.2d 692, 694–95 (5th Cir. 1969); *In re Eatherton*, 271 F.2d 199, 201–03 (8th Cir. 1959); Seligson & King, *Jurisdiction and Venue in Bankruptcy*, 36 Ref.J. 36 (1962). The statutory reference to "property within their jurisdiction" may be viewed as establishing jurisdiction as well as prescribing venue. *Cf.* Comment, 35 N.C.L. Rev. 476, 477–78 (1957). The revision of the statutory provision effected by the rule consists primarily in a reorganization for the purpose of clarification. Paragraph (2) of subdivision (a), however, eliminates the notion that residence or domicile may serve as a useful basis for determining venue of a corporation or partnership. The reference in this paragraph to location of the principal assets as a criterion of venue in a petition by or against a corporation or a partnership is derived from § 128, the general venue provision of Chapter X of the Act.

Paragraph (3) of subdivision (a) extends the principle embodied in § 5d of the Act. Like § 2a(1) of the Act, § 5d has served primarily as a venue provision though couched in jurisdictional terms. See 1 Collier ¶2.17[1] (1968). Paragraph (3) goes beyond § 5d by permitting a petition to be filed by or against a partner or partnership in a district because of the pendency there of a case which may not have been filed in accordance with the provisions of paragraph (1) or (2) of the subdivision that prescribe proper venue for such a case. The procedure for effecting a transfer of both cases, if in the interest of justice and for the convenience of the parties, is provided in subdivision (b). Paragraph (3) of subdivision (a) is also new in permitting a petition in bankruptcy to be filed in a district because of the pendency there of a case commenced under one of the debtor relief chapters. Rule 117 authorizes joint administration of partnership and partners' estates under appropriate circumstances.

Paragraph (4) of subdivision (a) is derived from but goes considerably beyond § 129 of the Act, which authorizes a petition by or against a subsidiary to be filed in a court which has approved a Chapter X petition by or against its parent corporation. An "affiliate" is defined in Rule 901(3) to include a subsidiary as defined in Chapter X of the Act (§ 106(13)), a parent corporation, and a variety of persons having connections different from those contemplated by §§ 106(13) and 129 of the Act. Joint administration of the estates of affiliates may be authorized under Rule 117.

Subdivision (b) of the rule incorporates the features of § 32 b and c of the Act and clarifies the procedure to be followed in requesting and effecting transfer of a case. While § 32b, which deals with cases filed in the wrong court of bankruptcy, authorizes transfer only on the filing of an objection, § 32c, which deals with transfer of cases even though filed in a proper venue, curiously appears to require no objection by a party in interest. Subdivision (b) authorizes the court to transfer a case on its own initiative as well as on motion, irrespective of whether the venue is proper or improper, but protects the parties against being subjected to a transfer in either event after the first meeting of creditors except on a timely motion of a party in interest. If the transfer would result in fragmentation or duplication of administration, increase expense, or delay closing the estate, such a factor would bear on the timeliness of the motion as well as on the propriety of the transfer under the standards prescribed in subdivision (b). Section 32b, in authorizing a transfer from a wrong court to a proper court of bankruptcy, requires the judge to act in the "interest of justice," whereas § 32c authorizes the judge to transfer any case to a court of bankruptcy in any other district if the interests of the parties will be best served thereby. Subdivision (b) of the rule requires the interest of justice and the convenience of the parties to be the grounds of any transfer of a case or of the retention of a case filed in a wrong district. *Cf.* 28 U.S.C. §§ 1404(a) (district court may transfer any civil action "[f]or the convenience of parties and witnesses, in the interest of justice") and 1406(a) (district court "shall dismiss, or if it be in the interest of justice, transfer" a case "laying venue in the wrong division or district"). Subdivision (b) of the rule also expressly requires a hearing on notice to the petitioner or petitioners before the transfer of any case may be ordered and before a case filed in the wrong district may be dismissed. This requirement applies when the court acts on its own initiative as well as when it transfers or dismisses a case on motion.

Although it has been said that under § 32 a court of bankruptcy cannot dismiss a case though filed in the wrong district, see, *e.g.*, *In re Bankers Trust*, 403 F. 2d 16, 22–23 (7th Cir. 1968); *In re Eatherton*, 271 F. 2d 199, 204 (8th Cir. 1959), the rule recognizes dismissal as one of the options available to the court in such a case, as it is under the amendment of 1949 to 28 U.S.C. § 1406(a) when the wrong venue is selected for ordinary civil litigation in a federal district court. Transfer or retention would normally be in the interest of justice, however, unless the choice of the wrong venue appears deliberate and "smacks of harassment or evidences some other element of bad faith" on the petitioner's part. 1 Moore 1909 (1961). If no motion objecting to venue or requesting a transfer is made, the court may retain the case without a hearing even though the venue is in fact improper. *Cf. Bass v. Hutchins*, 417 F. 2d 692, 696 (5th Cir. 1969).

Section 32 b and c of the Act purport to authorize only the judge to transfer a case to another court, but there is no procedure provided in either subdivision for a case that is automatically referred to the referee by the clerk pursuant to § 22a of the Act to come to the attention of the judge. Subdivision (b) vests the authority for determining the issues and entering orders thereunder in the court, which is ordinarily the referee.

Subdivision (c) is derived from § 32a of the Act and General Order 6. It extends the procedure provided by the statute and general order for petitions in different courts involving the same bankrupt and petitions involving members of the same partnership to petitions in different courts involving a partnership and one or more of its members and to petitions involving affiliates as defined in Rule 901(3). It also authorizes the court in which the first petition is filed under the Act by or against a bankrupt to entertain a motion seeking a determination whether the case so commenced should continue or be transferred and consolidated or administered jointly with another case commenced by or against the same or a related person in another court under a different chapter of the Act. The courts have entertained requests for transfers of the kind contemplated in subdivision (c)(2) by stretching the language of §§ 5d and 32a of the Act. *In re Imperial "400" National, Inc.*, 429 F. 2d 671, 679 (3d Cir. 1970); and see *In re Andreana Classics*, 134 F. Supp. 443, 444 (S.D.N.Y. 1955). Subdivision (c) is correlated with paragraphs (3) and (4) of subdivision (a) of this rule, which authorize petitioners to bring cases involving a partnership and partners or affiliated bankrupts into a court of bankruptcy. Subdivision (c), however, makes it the responsibility of the court receiving the first of the petitions that might have been but were not filed in the same court to determine whether transfer of the cases to one court or some other disposition of them would be appropriate. The standards, "interest of justice" and "convenience of the parties," are the same as those that govern transfers under subdivision (b) of the rule and are derived from § 32 a and b of the Act.

The references in subdivision (a) (3) and (4) and subdivision (c) to petitions filed "by" a partner or "by" any other of the persons mentioned are to be understood as referring to voluntary petitions. There is no purpose in either subdivision to permit more than one case to be filed in the same court because a creditor signing an involuntary petition happens to be a partner, a partnership, or an affiliate of a bankrupt.

Subdivision (d). Section 32 and General Order 6, which are the sources of the provisions of subdivisions (b) and (c) of Rule 116, are silent as to the procedure to be followed by the court to which a case is transferred. Subdivision (d) of this rule provides for an automatic reference in consonance with the procedure prescribed for handling cases originally filed in a court of bankruptcy.

Transfer of adversary proceeding. Transfers of adversary proceedings in bankruptcy are governed by Rule 782.

Rule 117. Consolidation or Joint Administration of Cases Pending in Same Court.

(a) Cases Involving Same Bankrupt.

If 2 or more petitions are pending in the same court by or against the same bankrupt, the court may order consolidation of the cases.

(b) Cases Involving 2 or More Related Bankrupts.

If 2 or more petitions are pending in the same court by or against (1) a husband and wife, or (2) a partnership and one or more of its general partners, or (3) 2 or more general members of a partnership, or (4) a bankrupt and an affiliate, the court may order a joint administration of the estates. Before making such an order the court shall give due consideration to the protection of creditors of the different estates against potential conflicts of interest.

(c) Expediting and Protective Orders.

When an order for consolidation or joint administration of 2 or more cases is entered pursuant to this rule, the court, while protecting the rights of the parties under the Act, may make such orders as may tend to avoid unnecessary costs and delay.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (a) of this rule is derived from General Order 7. It governs cases where the same debtor is named in both voluntary and involuntary petitions as well as cases where 2 or more involuntary petitions are filed against the same bankrupt. It also applies when the cases are pending in the same court by virtue of a transfer of one or more of the petitions from another court pursuant to Rule 116(b) or (c). Subdivision (c) allows the court discretion as to the order of trial of issues raised by 2 or more involuntary petitions against the same bankrupt.

Subdivision (b) recognizes the appropriateness of joint administration of estates in certain kinds of cases. The authorization for joint petitions and joint adjudications when a partnership is one of the bankrupts is not retained in these rules, since the provisions therefor in subdivision a and b of § 5 of the Act have been more confusing than helpful. Joint administration, on the other hand, has manifest advantages which ought not to be restricted to cases involving partnerships and partners. The election or appointment of one trustee for 2 or more jointly administered estates is authorized by Rule 210. The authority of the court to order joint administration under subdivision (b) of this rule extends equally to the situation where the petitions are filed under different rules, *e.g.*, where one petition is voluntary and the other involuntary, and to that where all of the petitions are filed under the same rule.

Consolidation of cases implies a unitary administration of the estate and will ordinarily be indicated under the circumstances to which subdivision (a) applies. This rule does not deal with the consolidation of cases involving 2 or more separate bankrupts. Although consolidation of the estates of separate bankrupts may sometimes be appropriate, as when the affairs of an individual and a corporation owned or controlled by him are so intermingled that the court cannot separate their assets and liabilities, such consolidation, as distinguished from joint administration, is neither authorized nor prohibited by this rule since the propriety of consolidation depends on substantive considerations and affects the substantive right of the creditors of the different estates. For an illustration of the substantive consolidation of separate estates, see *Sampsell* v. *Imperial Paper & Color Corp.*, 313 U.S. 215 (1941). See also *Chemical Bank N.Y. Trust Co.* v. *Kheel*, 369 F.2d 845 (2d Cir. 1966); Seligson & Mandell, *Multi-Debtor Petition—Consolidation of Debtors and Due Process of Law*, 73 Com. L.J. 341 (1968); Kennedy, *Insolvency and the Corporate Veil in the United States* in *Proceedings of the 8th International Symposium on Comparative Law* 232, 248–55 (1971).

Joint administration as distinguished from consolidation may include combining the estates by using a single docket for the matters occurring in the administration, including the listing of filed claims, the combining of notices to creditors of the different estates, and the joint handling of other purely administrative matters that may aid in expediting the cases and rendering the process less costly.

Subdivision (c) is an adaptation of the provisions of Rule 42(a) of the Federal Rules of Civil Procedure for the purposes of administration of estates under this rule. The rule does not deal with filing fees when an order for the consolidation of cases or joint administration of estates is made. *Cf.* Rule 107.

Rule 118. Death or Insanity of Bankrupt.

The death or insanity of the bankrupt shall not abate a bankruptcy case. In such event the estate of the bankrupt shall be administered and the case concluded in the same manner, so far as possible, as though the death or insanity had not occurred.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is an adaptation of § 8 of the Act. The proviso of this section is incorporated into Rule 403(f).

Rule 119. Bankrupt Involved in Foreign Proceeding.

When a proceeding for the purpose of the liquidation or rehabilitation of his estate has been commenced by or against a bankrupt in a court of competent jurisdiction without the United States, the court of bankruptcy may, after hearing on notice to the petitioner or petitioners and such other persons as it may direct, having regard to the rights and convenience of local creditors and other relevant circumstances, dismiss a case or suspend the proceedings therein under such terms as may be appropriate.

Notes of Advisory Committee on Rules

This rule is derived from § 2a(22) of the Act. *Cf.* Nadelmann, *The National Bankruptcy Act and the Conflict of Laws,* 59 Harv.L.Rev. 1025, 1041–46 (1946). Proceedings suspended pursuant to this rule may be reinstated after hearing on notice or as provided in the order suspending the proceedings. *Cf.* Note, *Consequences of Abstention by a Federal Court,* 73 Harv.L.Rev. 1358 (1960). Since the merits will rarely have been considered by the court in ordering a dismissal under this rule, such a dismissal is ordinarily without prejudice when the court includes no provision to the contrary in its order. Rule 120(c).

Rule 120. Dismissal of Case Without Determination of Merits.

(a) Voluntary Dismissal; Dismissal for Want of Prosecution.

A case shall not be dismissed on application or motion of the petitioner or petitioners or for want of prosecution or by consent of the parties until after hearing on notice to the creditors as provided in Rule 203(a). To enable the court to give such notice, the bankrupt, if he has not already done so, shall file a list of all his creditors with their addresses within the time fixed by the court. If the bankrupt fails to file such list, the court may by order provide for the preparation and filing of the list in such manner as may be appropriate.

(b) Dismissal for Failure to Pay Filing Fees.

(1) On nonpayment of any installment of the filing fees as ordered pursuant to Rule 107(b) and after hearing on notice to the bankrupt, the court may dismiss the case.

(2) If a case is dismissed or closed without the payment in full of the filing fees, the installments collected shall be distributed in the same manner and proportions as if the filing fees had been paid in full.

(3) Notice of dismissal for failure to pay the filing fees shall be given within 30 days after the dismissal to creditors appearing on the list of creditors and to those who have filed claims, in the manner provided in Rule 203.

(c) Effect of Dismissal.

Unless the order specifies to the contrary, dismissal of a case otherwise than on the merits is without prejudice.

Notes of Advisory Committee on Rules

Subdivision (a) of this rule is an adaptation of § 59g of the Act. While this rule, like § 59g, applies to a case commenced by a voluntary or an involuntary petition, the "consent of the parties" referred to in the first sentence of the rule is that of the petitioning creditors and the bankrupt in an involuntary proceeding. The last sentence of the subdivision, like Rule 108, recognizes that the court should not be confined to the petitioning creditors in its choice of parties on whom to call for assistance in preparing the list of creditors when the bankrupt has defaulted in the performance of his duty to provide such a list. Since these rules do not contemplate a dismissal for failure to pay costs except as provided in subdivision (b), the proviso of § 59g of the Act referring to such a dismissal is not retained in the rules.

Subdivision (b) is derived from General Order 35(4)(b). A dismissal under this subdivision can occur only when the petition has been permitted to be filed pursuant to Rule 107(b). The provision in paragraph (3) for notice of the dismissal is correlated with the provision in Rule 408 for notice to creditors when there is a waiver, denial, or revocation of a discharge. As pointed out in the Note accompanying Rule 408, the purpose of notifying creditors of a bankrupt that no discharge has been granted is to correct their assumption to the contrary so that they can take whatever steps to protect their claims appear to be appropriate in the light of such information.

Subdivision (c) is new. Dismissal of a bankruptcy case for a reason comprehended by this rule, and especially for failure to pay filing fees, has often operated harshly against the bankrupt. See, *e.g., In re Frey,* 95 F.Supp. 1007 (S.D.N.Y. 1951); MacLachlan, *Bankruptcy* 100 (1956); Shaeffer, *Proceedings in Bankruptcy in Forma Pauperis,* 69 Col. L. Rev. 1203, 1204 (1969). Typically he has been held thereafter barred from obtaining a discharge on the debts which could have been discharged in the case that was dismissed. *In re Seiden,* 174 F.2d 586, 587 (2d Cir. 1949); *Perlman v. 322 West Seventy-Second Street Co.,* 127 F.2d 716 (2d Cir. 1942) Although the court of bankruptcy has undoubtedly had discretion under Rule 41(b) of the Federal Rules of Civil Procedure to indicate that an involuntary dismissal was without prejudice to future relief under the Act, see Donnelly. *The Non-Dischargeability of Dischargeable Debts in Bankruptcy,* 36 Va.L.Rev. 185, 191 (1950), "the reported cases reveal no instance of a bankrupt escaping the res judicata effect of a dismissal because the dismissing court had so exercised its discretion." Countryman, *Cases and Materials* on *Debtor and creditor* 792 (1964). Subdivision (c) leaves discretion in the court to determine in the light of the circumstances whether dismissal of a bankruptcy case otherwise than on the merits should bar future relief under the Act, but when it makes no specific reference one way or the other in the order, a dismissal not on the merits is without prejudice. Under § 17b of the Act, added by the amendment of 1970, a failure to obtain a discharge in a prior proceeding dismissed without prejudice for failure to pay filing fees or to secure costs does not bar a discharge in a subsequent bankruptcy.

Rule 121. Applicability of Rules in Part VII.

Except as otherwise provided in Part I of these rules and unless the court otherwise directs, the following rules in Part VII apply in all proceedings relating to a contested petition and in all proceedings to vacate an adjudication: Rules 705, 708–710, 715, 716, 724–726, 728–737, 744.1, 752, 756, and 762. The court may direct that one or more of the other rules in Part VII shall also apply in such a proceeding. For the purposes of this rule a reference in the rules in Part VII to adversary proceedings shall be read as a reference to proceedings relating to a contested petition or proceedings to vacate an adjudication, and a reference in the Federal Rules of Civil Procedure to the complaint shall be read as a reference to the petition.

Notes of Advisory Committee on Rules

The rules in Part VII to which the rule refers are adaptations of the Federal Rules of Civil Procedure for the purpose of governing the procedure in adversary proceedings in bankruptcy cases. See the Note accompanying Rule 701 *infra.* Because of the special need for dispatch and expedition in the determination of the question of adjudication, see *Acme Harvester Co. v. Beekman Lbr. Co.,* 222 U.S. 300, 309 (1911), the objective of some of the Federal Rules of Civil Procedure and their adaptations in Part VII to facilitate the settlement of multiple controversies involving many persons in a single lawsuit is not compatible with the exigencies of bankruptcy administration. See *United States F. & G. Co. v. Bray,* 225

U.S. 205, 218 (1912). For that reason such rules as 713, 714, and 718–723 would be rarely if ever appropriate for application in a proceeding on a contested petition.

Certain terms used in the Federal Rules of Civil Procedure have altered meanings when they are made applicable in bankruptcy cases by these rules. See Rule 902 *infra*. This Rule 121 requires that the terms "adversary proceedings" when used in the rules in Part VII and "complaint" when used in the Federal Rules of Civil Procedure be given altered meanings when they are made applicable to proceedings relating to a contested petition or proceedings to vacate any adjudication. A motion to vacate an adjudication, whether or not made on a petition that was or could have been contested, is governed by the rules in Part VII referred to in this Rule 121.

Rule 122. Conversion of a Chapter Case to Bankruptcy.

When an order is entered in a Chapter X, XI, XII, or XIII case directing that the case continue as a bankruptcy case, the procedure shall be as follows:

(1) In all respects other than as provided in the following paragraphs, the case shall be deemed to have been commenced as of the date of the filing of the first petition initiating a case under the Act and shall be conducted as far as possible as if no petition commencing a chapter case had been filed.

(2) Unless otherwise directed by the court, lists, inventories, schedules, and statements filed in the superseded case shall be deemed to be the schedules and statement of affairs filed in the bankruptcy case pursuant to Rule 108 and in full compliance therewith; but if no such documents have been previously filed, the bankrupt shall comply with Rule 108 as if he had been adjudicated an involuntary bankrupt on the date of the entry of the order directing that the case continue as a bankruptcy case.

(3) Notice of the order directing that the case continue as a bankruptcy case shall be given to all creditors in the manner provided by Rule 203 within 20 days after entry of the order and shall accompany the notice of the first meeting of creditors if one is held. If no first meeting of creditors is held, the date of the mailing of the notice of the order as provided in this paragraph shall be deemed the first date set for the first meeting of creditors for the purposes of any rule referring to that date to prescribe the time when or within which an act is required or allowed to be done; but if the time for filing claims, a complaint objecting to discharge, or a complaint to obtain a determination of the dischargeability of any debt had expired in a pending bankruptcy case prior to the filing therein of a chapter petition, the preceding clause of this paragraph shall not be deemed to revive or extend such time.

(4) A trustee shall be appointed by the court and notified pursuant to Rule 209(c), and shall qualify pursuant to Rule 212, unless

(A) a trustee has been previously selected pursuant to Rule 209 and has qualified, in which event he shall be immediately notified of the order directing that the case continue as a bankruptcy case and shall enter upon the performance of his duties without further qualification; or

(B) a standby trustee has been nominated in the superseded case, in which event he shall be immediately notified pursuant to Rule 209(c) and, within 5 days after receipt of notice, shall qualify in the manner provided by Rule 212; or

(C) the court pursuant to Rule 211 orders that no trustee be appointed.

If a trustee notified under this paragraph fails to qualify or to enter upon the performance of his duties, the court shall appoint a trustee pursuant to Rule 209.

(5) All claims filed in the superseded case shall be deemed filed in the bankruptcy case.

(6) Forthwith after qualification of the trustee or entry by him on the performance of his duties as provided in paragraph (4) of this rule, any trustee, receiver, or debtor in possession previously acting in the chapter case shall, unless otherwise ordered, turn over to the trustee in bankruptcy all the records and property of the estate in his possession or subject to his control.

(7) Each trustee, receiver, and debtor in possession acting in the superseded chapter case shall, unless the court otherwise directs, file with the court a final report and account within 30 days after the entry of the order directing that the case continue as a bankruptcy case, including, in a superseded Chapter X, XI, or XII case, a separate schedule listing unpaid debts incurred by him after the commencement of the chapter case. If the order is entered after confirmation of a plan, the debtor shall file with the court schedules of (A) property not listed in the final report filed pursuant to the preceding sentence of this paragraph and acquired by him after the filing of the original petition under the Act and before the entry of the order directing that the case continue as a bankruptcy case and (B) debts are listed in the final report filed pursuant to the preceding sentence of this paragraph and incurred by him after confirmation and before the entry of such order.

(8) On the filing of a schedule required by the preceding paragraph, the court shall enter an order directing the claims so scheduled, including claims of the United States, any state, and any subdivision thereof, to be filed and shall give notice by mail to the holders thereof to file their claims pursuant to Rule 302(a)-(d) within 60 days from the entry of the order directing them to be filed, except that claims not scheduled as provided in the preceding paragraph and claims arising from rejection of executory contracts under paragraph (10) of this rule may be filed within such further time as the court may direct.

(9) If the court grants an extension of time for the filing of claims pursuant to Rule 302(e)(5), the extension shall apply to holders of claims who failed to file within the time prescribed by, or fixed by the court pursuant to, paragraph (8) of this rule, and notice shall be given them in the manner provided in Rule 203(a).

(10) Rule 607 shall govern the assumption, rejection, and assignment of contracts entered into or assumed by a trustee, receiver, or debtor in possession acting in the superseded chapter case which are executory in whole or in part at the time of the entry of the order directing the case to continue as a bankruptcy case, except that with respect to a trustee selected as provided in paragraph (4)(A) of this rule the time periods prescribed by Rule 607 shall begin to run from the entry of such order.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is derived from §§ 238, 261, 338, 378, 381, 391, 483, 486, 516, 643, 667, 669, and 676 of the Act. The rule applies to proceedings in a bankruptcy case following supersession of a case commenced under Chapter X, XI XII, or XIII, whether the latter was initiated by an original petition or by a petition filed in a pending bankruptcy or another chapter case. The case may have originated as a bankruptcy case in which a petition commencing a chapter case was filed but in which an order was entered directing the resumption of the bankruptcy case. There may have been more than one aborted chapter case, *e.g.*, a Chapter XI case, converted to a Chapter X case, in which was entered the order directing the case to continue in bankruptcy. The rule is not intended to invalidate any action taken in the superseded case before its conversion to bankruptcy.

If requirements applicable in the superseded case respecting the filing of schedules of debt and property, or lists of creditors and inventory, and of statements and executory contracts have been complied with before the order directing conversion to bankruptcy, these documents will ordinarily provide all the information about the debts, property, financial affairs, and contracts of the bankrupt needed for the administration of the estate in bankruptcy. If the information submitted in the superseded case is inadequate for the purposes of bankruptcy administration, however, the court may direct the preparation of further informational material and the manner and time of its submission pursuant to paragraph (2). If no schedules, lists, inventories, or statements were filed in the superseded case, this paragraph imposes the duty on the bankrupt to file schedules and a statement of affairs pursuant to Rule 108 as if he had been adjudicated an involuntary bankrupt on the date when the court directed the continuation of the case as a bankruptcy case.

Paragraphs (4) and (6) contemplate that typically, after the court orders conversion of a chapter case to bankruptcy, a trustee in bankruptcy will forthwith take charge of the property of the estate and proceed expeditiously to liquidate it. If no trustee has previously qualified and no standby trustee selected in the chapter case is awaiting notification of an order of conversion, the court will appoint a trustee. The procedure so prescribed follows that established by the 1967 amendment of § 378 of the Act for a bankruptcy that supersedes a Chapter XI case. See 8 Collier ¶5.49[14](1968); 9 *id.* ¶10.11(1968). Paragraph (4) of this rule eliminates the hiatus that would otherwise occur in the control and supervision of the estate on the entry of an order of conversion to bankruptcy in a case where no trustee previously selected pursuant to Rule 209 has qualified and no standby trustee has been nominated in the superseded chapter case.

Paragraphs (7), (8), (9), and (10) of the rule embody the substance of amendments of provisions in Chapters X, XI, and XII that were enacted in 1967 to improve the administration of estates in superseding bankruptcies. The procedures prescribed by this legislation are extended by this rule to the extent they are appropriate to bankruptcies that supersede Chapter XIII cases. The provision in the last sentence of §§ 238b, 378b, and 483b of the Act to the effect that rejection in the bankruptcy case of a contract entered into or assumed in a superseded chapter case creates a cost of administration of the superseded case prescribes a rule of priority inappropriate for inclusion in this rule.

PART II.—OFFICERS FOR ADMINISTERING THE ESTATE; NOTICES TO CREDITORS; CREDITORS' MEETINGS; EXAMINATIONS; ELECTIONS; ATTORNEYS AND ACCOUNTANTS

Rule 201. Appointment and Duties of Receivers.

(a) Purposes and Term of Receivership.

Subject to the provisions of this rule, the court may appoint a receiver when necessary in the best interest of the estate (1) to take charge of the property of a bankrupt; (2) to conduct the business of the bankrupt; or (3) to afford representation to the estate in an action, adversary proceeding, or contested matter when no trustee has qualified or the interest of the trustee may be adverse to that of the estate. Such appointment shall be terminated when the trustee qualifies or there is no further need for a receiver, and the authorization to conduct the business of the bankrupt after adjudication shall continue only for such time as may be in the best interest of the estate and consistent with orderly liquidation.

(b) Application for Appointment.

An application for appointment of a receiver shall state the specific facts showing the necessity for the appointment.

(c) Appointment Before Adjudication.

Before adjudication, appointment of a receiver may be made only on application. The application may be granted only after hearing on notice to the alleged bankrupt and such other parties in interest as the court may designate, except that a receiver may be appointed without notice if irreparable loss to the estate may otherwise result. An application for appointment of a receiver without notice and any order of appointment made without notice shall state what loss may result and why it would be irreparable.

(d) Bond of Applicant.

Before adjudication, no receiver may be appointed unless the applicant furnishes a bond in such amount and with such surety as the court shall approve, conditioned to indemnify the bankrupt for the costs, counsel fees, expenses, and damages occasioned by the appointment and action of the receiver in the event the petition is dismissed or withdrawn. The property of the bankrupt shall be released, however, if he files a counter-bond in such amount and with such surety as the court shall approve, conditioned that the bankrupt account for and turn over such property or pay to the trustee the value thereof in money at the time of release in the event the adjudication is made.

(e) Appointment After Adjudication.

After adjudication the court may appoint a receiver on application or on its own initiative. Such appointment shall be made only after notice to such persons as the court may designate, unless it clearly appears that notice is impracticable or unnecessary.

(f) Eligibility.

Only a person who is eligible to be a trustee under Rule 209(d) may be appointed a receiver.

(g) Order of Appointment.

An order appointing a receiver shall state why the appointment is necessary. A receiver is a mere custodian unless, upon proper cause shown, his duties are enlarged or otherwise specified by order of court. A copy of every order appointing a receiver shall forthwith be delivered to the bankrupt, or mailed to him at his last known address, and to such other persons as the court may designate.

(h) Notice of Appointment; Qualification.

The court shall immediately notify the receiver of his appointment, inform him as to how he may qualify, and require him forthwith to notify the court of his acceptance or rejection of the office. A receiver shall qualify as provided in Rule 212.

(i) Duties.

A receiver shall perform the duties prescribed in Rule 218 to the extent it is appropriate, except as the court may otherwise direct. Forthwith after qualification of the trustee, the receiver shall, unless otherwise ordered, turn over to the trustee all the records and property of the estate in his possession or subject to his control as receiver. The receiver shall file his final report and account within 30 days after qualification of the trustee unless the court otherwise directs.

Notes of Advisory Committee on Rules

Subdivision (a) of Rule 201 is derived from § 2a(3) and (5) of the Act but adds, in clause (3), a provision for appointment of a receiver when the interest of the trustee may be adverse to that of the estate. Such a situation may arise for example in a proceeding to remove the trustee under Rule 221(a). The subdivision also accommodates the appointment of a receiver to represent the estate when no trustee is appointed (see Rule 211) and a need arises in the course of administration for appointment of a temporary or ad hoc representative of the estate rather than a trustee (or a new trustee) with all the duties and compensation that appertain to that officer. For a reference to such a situation, see Rule 403(d). *Cf. Bartle v. Markson,* 357 F. 2d 517, 524 (2d Cir. 1966) (appointment of trustee authorized in reopened Chapter XI case "for the limited purpose of insuring effective prosecution of creditors' claims"). The appointment of the receiver ordinarily terminates automatically on the qualification of the trustee. The requirements of the last clause of the subdivision that the receiver's continuation of the bankrupt's business be in the best interest of the estate and consistent with orderly liquidation are correlated with similar limitations imposed on the trustee in Rule 216.

Subdivisions (b), (c), (e), and (g). Subdivisions (b), (c), and (e), and the first and third sentences of subdivision (g) are new. The policy expressed in § 2a(3) of authorizing appointment of receivers only in cases of necessity is preserved and reinforced by the provisions in subdivisions (b) and (g) of the rule requiring the application for a receiver and the order of appointment to state why the appointment is necessary. The theme of General Order 40 to restrict receivership expense, by presuming the receiver's duties and compensation to be those of a mere custodian in the absence of explicit enlargement by court order, is retained in the second sentence of subdivision (g).

Subdivisions (c) and (e) differentiate between appointment of a receiver before adjudication and one made afterward in recognition of the fact that prior to adjudication the divestment of the bankrupt's title to his property has not yet been legally established. The restriction of subdivision (c) against appointment of a receiver before adjudication without notice unless irreparable loss would otherwise result to the estate codifies a limitation applied by the courts under § 2a(3) of the Act. See *In re Press Printers & Publishers, Inc.,* 12 F. 2d 660, 661 (3d Cir. 1926), cert. denied, 276 U.S. 633 (1928); 1 Collier ¶ 2.26 (1968). Appointment of a receiver without prior notice is made the exception after as well as before adjudication, and subdivision (g) provides for prompt notice to the bankrupt of any appointment of a receiver after it has been made. Subdivision (e) recognizes that after adjudication the court may appoint a receiver without waiting for an application and in exceptional circumstances may do so without giving notice. The authority of a referee under the Act to appoint a receiver on his own motion, even when the alternative appears to be lost to the estate, has been a matter of debate. See *Proceedings of Seminar for Newly Appointed Referees in Bankruptcy* 120–21 (1964). *Cf.* E.D.Va. Bankr.Rule 13(a).

Subdivision (d) is derived from § 69a of the Act and includes clarifying language from Official Form No. 8. Rule 925 applies to any proceeding to enforce liability on a bond given pursuant to this subdivision.

Subdivision (f) follows § 45 of the Act in assimilating eligibility requirements for receivers to those for trustees. The requirements for trustees are set out in Rule 209(d).

Subdivision (h). Rule 212, to which subdivision (h) refers, incorporates with modifications the requirements respecting a receiver's bond set out in § 50b and h of the Act. The notice to the receiver should inform him of the penal sum of his bond, if required or of whatever other mode of qualification is prescribed by the court pursuant to Rule 212.

Subdivision (i) is new but is substantially a restatement of sound practice as recognized in the cases and local rules. See 1 Collier ¶ 2.31 (1968): 11 *id.* § 6.003 (1968). The last sentence is an adaptation of Bankruptcy Rule 8(f) of the Southern and Eastern Districts of New York. As the last clause recognizes, the rule does not preclude a local rule or court order from requiring an earlier report and account by a receiver—*e.g.,* at the first meeting of creditors. See, *e.g.,* D.Minn.Banker.R. 8(j).

Rule 202. Appointment of Marshal in Lieu of Receiver; His Duties.

The court may appoint a marshal in lieu of a receiver and, in such event, the provisions of Rule 201 except subdivisions (f) and (h) shall apply.

Notes of Advisory Committee on Rules

This rule derives from provisions in §§ 2a (3) and (5) of the Act and General Order 40. The reference in the rule, as in the Act, is to the United States marshal.

Rule 203. Notices to Creditors and the United States.

(a) Ten-Day Notices to All Creditors.

Except as provided hereinafter, the court shall give all creditors at least 10 days' notice by mail of (1) a meeting of creditors; (2) any proposed sale of property, including the time and place of any public sale, unless the court for cause shown shortens the time or orders a sale without notice; (3) the hearing on the approval of a compromise or settlement of a controversy, unless the court for cause shown directs that notice not be sent; (4) the date fixed for the filing of claims against a surplus in an estate as provided in Rule 302(e)(5); (5) the hearing on the dismissal of a case when notice is required by Rule 120(a); and (6) the hearing on approval of a trustee's or a receiver's account and on an application for compensation or reimbursement of expenses filed by a receiver, marshal, trustee, attorney, or accountant, except when no final meeting of creditors is required to be ordered pursuant to Rule 204(c). The notice of a proposed sale of property, including real estate, is sufficient if it generally describes the property to be sold. The notice of a hearing on an application for compensation or reimbursement of expenses shall specify the applicant and the amount requested.

(b) Notice of No Dividend.

If it appears from the schedules that there are no assets from which a dividend can be paid, the court may include in the notice of the first meeting a statement to that effect, that it is unnecessary to file claims, and that if sufficient assets become available for the payment of a dividend, the court will give further notice of the opportunity to file claims and the time allowed therefor.

(c) Other Notices to All Creditors.

The court shall give notice by mail to all creditors of (1) the dismissal of the case for failure to pay filing fees pursuant to Rule 120(b); (2) the entry of an order directing that a chapter case continue as a bankruptcy case as provided in Rule 122(c); (3) the time allowed for filing claims pursuant to Rule 302(e)(4) after issuance of a notice of no dividend; (4) the time fixed for filing a complaint objecting to the bankrupt's discharge pursuant to Rule 404(b); (5) the order of discharge as provided in Rule 404(h); (6) the waiver, denial, or revocation of a discharge as provided in Rule 408; and (7) the time allowed for filing a complaint to determine the dischargeability of a debt pursuant to § 17c(2) of the Act as provided in Rule 409(a)(2).

(d) Notices to Creditors Whose Claims Are Filed.

After 6 months following the first date set for the first meeting of creditors, the court may direct that all notices required by subdivision (a) of this rule, except clause (4) thereof, be mailed only to creditors whose claims have been filed and creditors, if any, who are still permitted to file claims by reason of an extension granted under Rule 302(e).

(e) Addresses of Notices.

All notices to which a creditor is entitled under these rules shall be addressed to the creditor as he or his duly authorized agent may direct in a request filed with the court; otherwise, to the creditor at the address shown in the schedules or, if a different address is stated in a proof of claim duly filed, then at the address so stated.

(f) Notices to Creditors' Committee.

Notwithstanding the foregoing subdivision, if a creditors' committee has been elected, the court may order that notices required by clauses (2), (3), and (6) of subdivision (a) be mailed only to the committee or to its authorized agent and to creditors who file with the court a request that all notices under these clauses be mailed to them.

(g) Notices to the United States.

Copies of notices required to be mailed to all creditors under these rules shall be mailed (1) to the district director of internal revenue for the district in which the case is pending and (2) whenever the schedules, the list of creditors, or any other paper filed in the case discloses a debt to the United States other than one for taxes, to the United States attorney for the district in which the case is pending and, if disclosed by the filed papers, to the department, agency, or instrumentality of the United State through which the bankrupt became so indebted.

(h) Notice by Publication.

If the court finds that it is impracticable to give notice to creditors by mail as provided in this rule or that it is desirable to supplement such notice, the court may order publication thereof.

(i) Caption.

The caption of every notice given under this rule shall comply with Rule 106 and shall also include all names used by the bankrupt within 6 years before the filing of the petition, as disclosed on the statement of affairs filed pursuant to Rule 108.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule collects the provisions for notices specifically applicable to creditors in bankruptcy cases, but reference must be made to other rules for the time and certain other requirements respecting the notices listed in subdivision (c). The grant of general authority to the court to regulate notices in Rule 907 supplements but is subject to the specific provisions of Rule 203 and any other rules prescribing the terms of notice.

Subdivision (a) essentially restates the requirement of § 58a of the Act that all creditors get 10-day notices by mail of the significant events in a bankruptcy case. Since notice by mail is complete on mailing, the requirement of this subdivision is satisfied if the notices it prescribes are deposited in the mail at least 10 day before the event. See Rule 906(e); 3 Collier 494 (1971). The time limits prescribed by subdivision (a) cannot be reduced except to the extent and under the conditions stated in this rule. Cf. Rule 906(c) *infra*. The exceptions referred to by the introductory phrase of subdivision (a) include the modifications in the notice procedure permitted by subdivision (d) as to nonfiling creditors after the time for filing claims has expired, by subdivision (f) as to creditors who have elected a committee to represent them, and by subdivision (h) when compliance with subdivision (a) is impracticable.

The provision in § 58a(1) of the Act for notice of examinations of the bankrupt is deleted as unnecessary. As provided in Rules 204(a)(2) and 205(b), the examination of the bankrupt is ordinarily conducted at the first meeting of creditors, notice of which is required by subdivision (a) of this rule. If an examination is conducted at any other time pursuant to Rule 205(a), the court may give notice to some or all creditors pursuant to Rule 907. Notice to creditors of examinations of the bankrupt was made discretionary in 1938 in recognition of the fact that such notice is often not feasible. See 3 Collier ¶ 58.01 n. 11, ¶ 58.06 (1964).

If a meeting of creditors is adjourned before its conclusion, no notice of the adjourned date is required to be given to creditors under this rule. Treatment of the adjournment as a continuance of the meeting conforms to established and approved practice under the Act. 3 Collier 11–12 (1964).

The notice of a proposed sale carried over from § 58a(4) of the Act to clause (2) of this rule affords the creditors an opportunity to express their views as to whether the sale should be public or private, in bulk or by parcels, etc. The notice to creditors of a proposed sale of property is required to specify its time and place in order to enable the creditors to protect their interests by attending the sale or sending a representative. Protection of creditor interests does not, however, require the notice to contain a legal description of real estate or other property to be sold. See *In re Nevada-Utah Mines & Smelters Corp.*, 202 Fed. 126, 129 (2d Cir. 1913); *In re Park Distributors, Inc.*, 176 F. Supp. 38, 41 (S.D.Cal. 1959).

The provision in clause (4) for notifying creditors of a deadline fixed pursuant to Rule 302(e)(5) is also new. A notice of all creditors of the fixing of a new date for filing claims when a surplus remains in the estate is necessary if the opportunity to share therein afforded late filers by § 57 of the Act is to be meaningful and the distribution is to be fair. See *In re Searles*, 166 F. 2d 475, 477–78 (2d Cir. 1948) (Frank J., dissenting). Subdivision (d) recognizes that nonfilers and late filers must get the notice prescribed by clause (4) of subdivision (a).

The hearing on a trustee's account or an application for compensations or reimbursement of expenses filed under Rule 219 is typically held at the final meeting of creditors. Rule 204(c) excuses the calling of a final creditors' meeting when the net realization for the estate does not exceed $250, and the exception to the notice requirements of clause (6) is correlated with the dispensation respecting the final meeting.

Subdivision (b), authorizing a notice of the apparent insufficiency of assets for the payment of any dividend, to be given in conjunction with the notice of the first meeting of creditors, is correlated with Rule 302(e)(4), which provides for the issuance of an additional notice to creditors if the possibility of a payment of a dividend later materializes.

Subdivision (d). After the time for filing claims has expired, creditors who have not filed their claims in accordance with Rule 302 are not entitled to share in the estate except as they may come within the special provisions of Rule 302(e)(1)–(5). Subdivision (d) takes account of the fact that eliminating notice to creditors who have no recognized stake in the estate may permit economies in time and expense. Reduction of the list of creditors to receive notices under this subdivision is discretionary. This subdivision does not of course apply to the notice of the first meeting of creditors.

Subdivision (e) recognizes that an agent authorized to receive notices for a creditor may, without a court order, designate how notices to the creditor he represents should be addressed. Such an agent includes an officer of a corporation, an attorney at law, or an attorney in fact if the requisite authority has been given him. It should be noted that Official Forms No. 13 and No. 14 do not include an authorization of the holder of a power of attorney to receive notices for the creditor, but neither these forms nor this rule carries any implication that such an authorization may not be given in a power of attorney or that a request for notices to be addressed to both the creditor and his duly authorized agent may not be filed.

Subdivision (f) is an adaptation of the proviso at the end of § 58a. It enlarges the list of matters of which notice may be given a creditors' committee in lieu of notice to the creditors to include the hearing on approval of the trustee's or receiver's account and on an application for compensation or reimbursement of expenses. Such notice may serve every practical purpose of a notice to all the creditors and save delay and expense. *In re Schulte-United, Inc.*, 59 F. 2d 553, 561 (8th Cir. 1932).

Subdivision (g) is a revision of § 58e of the Act. The premise of the requirement that the district director of internal revenue receive copies of notices that all creditors receive is that every bankrupt is at least potentially a tax debtor of the United States. Notice to the district director alerts him to the possibility that a tax debtor's estate is about to be liquidated and that he may be discharged in bankruptcy. Where other indebtedness to the Federal Government is indicated, the United States district attorney is notified in every case as the person in best position to see to it that the interests of the government are protected. In addition, the provision in the last sentence of § 58e requiring notice by mail to the head of any department, agency, or instrumentality of the United States through whose action the bankrupt became indebted to the United States is carried into this subdivision of the rule. This rule is not intended to preclude a local rule from requiring a state or local tax authority to receive some or all of the notices creditors are entitled to receive under these rules.

Subdivision (h) specifies two kinds of situations in which notice by publication may be appropriate: (1) when notice by mail is impracticable; and (2) when notice by mail alone is less than adequate. Notice by mail may be impracticable when, for example, the bankrupt has disappeared or his records have been destroyed and the names and addresses of his creditors are unavailable, or when the number of creditors with nominal claims is very large and the estate to be distributed may be insufficient to defray the costs of issuing the notices. Supplementation of notice by mail is indicated when the bankrupt's records are incomplete or inaccurate and it is reasonable to believe that publication may reach some of the creditors who would otherwise be missed. Rule 908 applies when the court directs notice by publication under this rule. Neither clause (2) of subdivision (a) nor subdivision (g) of this rule is concerned with the publication of advertisement to the general public of a sale of property of the estate at public auction under Rule 606(b). See 3 Collier 504–06 (1971); 4A *id.* 1165–67 (1967).

Subdivision (i). As noted in connection with Rule 106, the disclosure requirement in subdivision (i) of this rule follows the practice established in some districts by local rule. Inclusion in notices to creditors of information as to other names used by the bankrupt will assist them in the preparation of their proofs of claim and in deciding whether to file a complaint objecting to the bankrupt's discharge. While the other names used by the bankrupt and required to be disclosed will ordinarily be included in the caption pursuant to Rule 106, there may be additional names listed by the bankrupt on his statement of affairs when he did not file the petition. The mailing of notices should not be postponed to await a delayed filing of the statement of affairs.

Disposition of provisions of § 58c of Act. The provisions of § 58c of the Act, requiring notices to be given by the referee unless otherwise ordered by the judge and authorizing written waiver of any notice required by the Act, have been omitted from the rule as unnecessary. The duty to give notice to the creditors under this rule and under Rules 404 and 408 is imposed on the court. This duty may be delegated to an assistant or an employee in the clerk's office as provided in Rule 506. Rule 907 authorizes the court to prescribe the manner in which any other notice is to be given under the rules. These rules pose no obstacle to the court's giving notice by mail deposited at the location of a national or regional computer center on the basis of information supplied the center by the court. Waiver of notice may be by conduct as well as in writing, and its effect may be appropriately left to case law. See *e.g., Connelly v. Hancock, Dorr, Ryan & Shove*, 195 F.2d 864, 868–69 (2d Cir. 1952); *In re Purrier*, 73 F.Supp. 418, 420 (W.D. Wash. 1947).

Rule 204. Meetings of Creditors.

(a) First Meeting.

(1) *Date and Place.* The first meeting of creditors shall be held not less than 10 nor more than 30 days after the adjudication, but if there is an appeal from or a motion to vacate the adjudication, or if there is a motion to dismiss the case, the court may delay fixing a date for such meeting. The meeting may be held at a regular place for holding court or at any other place within the district more convenient for the parties in interest.

(2) *Agenda.* The bankruptcy judge shall preside over the transaction of all business at the first meeting of creditors, including the examination of the bankrupt. He shall, when necessary, determine which claims are entitled to vote at the meeting and shall conduct the election of a trustee and, if one is held, the election of a creditors' committee.

(b) Special Meetings.

The court may call a special meeting of creditors on application or on its own initiative.

(c) Final Meeting.

The court shall order a final meeting of creditors in every case in which the net proceeds realized exceed $250 and shall mail a summary of the trustee's final account to the creditors with the notice of the meeting, together with a statement of the amount of the claims allowed. The trustee shall attend the final meeting and shall, if requested, report on the administration of the estate.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is derived essentially from § 55 of the Act.

Subdivision (a). Paragraph (1) follows § 55a closely in establishing limits on the time and place for the first meeting of creditors. The Judicial Conference designates regular places for holding court under § 37b(1) of the Act. See also Rule 501(b). The filing of an appeal from an adjudication or of a motion to vacate an adjudication or to dismiss a case likely to cause the court to delay the first meeting, but, as is made clear in the first sentence of the rule, this is a matter properly lying within the discretion of the court. The last sentence of § 55a of the Act, requiring the court to set a date "as soon as may be thereafter" if the first meeting by some "mischance" is not held within the statutory time limits, is omitted as unnecessary.

Paragraph (2) is an adaptation of § 55b of the Act. The bankruptcy judges will have occasion to allow or disallow a claim at the first meeting of creditor only when there has been an objection or a creditor has filed a proof of claim insufficient on its face. See Rules 207(a) and

306(b). Ordinarily allowance of a claim at the first meeting will be made only for the purpose of enabling the creditor to vote. The bankruptcy judge will also determine any issues arising under Rule 208 at the first meeting of creditors.

Subdivision (b) is derived from § 55d of the Act but vests discretion in the court as to when or whether a special meeting of creditors shall be called. *Cf.* General Order 25. The rule does not retain the requirement of § 55c that creditors at each meeting take pertinent and necessary steps to promote the best interests of the estate and the enforcement of the Act. The trustee is charged with the duty of taking whatever steps are pertinent and necessary for these purposes. See 2 Collier ¶47.02 (1964). While the trustee should give heed to the wishes of creditors, the responsibility for decision rests on him. *Id.* ¶47.30. If he defaults in the performance of any specific duty, "the court may upon application direct him in his duty or, if he be recalcitrant, remove him for disobedience, or permit a creditor to act in his name." *Reuping Leather Co.* v. *Ft. Greene Nat. Bank,* 102 F.2d 372, 373 (3d Cir. 1939).

Subdivision (c) is derived from §§ 47a(14) and 55e of the Act and General Order 12(4), but a final meeting may dispensed with under the rule even when there are assets in the estate if the net proceeds realized on liquidation of the estate do not exceed $250. The net realization is required to be determined under the schedule of additional fees chargeable in asset and nominal asset cases which has been promulgated by the Judical Conference pursuant to § 37b of the Act. The reduction in the number of final meeting permitted by this rule should result in substantial savings of time and expense to referees' offices and facilitate earlier closing of cases.

Rule 205. Examination.

(a) Examination on Application.

Upon application of any party in interest, the court may order the examination of any person. The application shall be in writing unless made during a hearing or examination or unless a local rule otherwise provides.

(b) Examination of Bankrupt at First Meeting.

At the first meeting of creditors, the court shall publicly examine the bankrupt or cause him to be examined and may permit any party in interest to examine the bankrupt.

(c) Bankruptcy Judge to Preside.

The bankruptcy judge shall preside at any examination under subdivision (b) of this rule.

(d) Scope of Examination.

The examination under subdivisions (a) and (b) of this rule may relate only to the acts, conduct, or property of the bankrupt, or to any matter which may affect the administration of the bankrupt's estate, or to his right to discharge.

(e) Compelling Attendance for Examination and Production of Documentary Evidence.

The attendance of any person for examination and the production of documentary evidence may be compelled in accordance with the provisions of Rule 916 by the use of a subpoena for a hearing or trial.

(f) Place of Examination of Bankrupt.

Without issuing a subpoena, the court may for cause shown and on such terms as it may impose order the bankrupt to be examined under subdivision (a) of this rule at any place it designates, whether within or without the district wherein the case in pending.

(g) Mileage.

A person other than a bankrupt shall not be required to attend as a witness before a bankruptcy judge unless his lawful mileage and fee for one day's attendance shall be first tendered to him. If the bankrupt resides over 100 miles from the place of examination when he is required to appear for an examination under subdivision (a) of this rule, he shall be tendered mileage allowed by law to a witness for any distance over 100 miles from his residence at the date of bankruptcy or his residence at the time he is required to appear for such examination, whichever is the lesser.

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Subdivision (a) of this rule is an adaption of the first sentence of § 21a of the Act. No change in the persons who can apply for the examination or who can be examined under this subdivision of the Act is intended. See generally 2 Collier ¶¶ 21.06, 21.08, 21.09 (1964). The second sentence clarifies the manner of making application for an examination. The rule omits the provision in § 21a requiring a person to appear before the judge of any state court for examination. The provision appears to be unnecessary and to have been little used. The possible need for an examination before a nearby state court judge when the witness resides in the district but more than 100 miles from the place of examination is suggested in 2 Collier 332 (1964), but this need does not arise under the rule by virtue of the supersession of the special territorial limitation on holding examinations contained in the proviso of § 41a of the Act. See the comments *infra* regarding subdivisions (e) and (g) of the rule.

Subdivisions (b) and *(c)* are derived from § 55b of the Act.

Subdivision (d) combines provisions in §§ 7a(10) and 21a of the Act for the purpose of defining the scope of any examination under the rule. The references in § 7a (10) to "the conducting of his [*i.e.*, the bankrupt's] business, the cause of his bankruptcy, his dealings with his creditors and other persons, and whereabouts of his property" as appropriate subjects of inquiry of the bankrupt are omitted from the rule because embraced by the broad definition of the scope of examination derived from the merger of other language in § 7a(10) with the definition in § 21a. It has indeed been held that the scope of examination under the latter provision is not less broad in scope than that permitted by the more elaborate definition in § 7a(10). *Freeman v. Seligson,* 405 F.2d 1326, 1333 (D.C. Cir. 1968); *Chereton v. United States,* 286 F.2d 409, 413 (6th Cir.), cert.denied, 366 U.S. 924 (1961); *Ulmer v. United States,* 219 Fed. 641, 644 (6th Cir. 1915); *In re Insull Utility Investments, Inc.,* 27 F.Supp. 887, 890 (S.D.N.Y. 1934). The proviso of § 21a relating to examination of the bankrupt's spouse are not included in the rule since (1) no special provision negating a spousal privilege is necessary (see Advisory Committee's Notes accompanying Rules 501 and 505 of the Federal Rules of Evidence), and (2) no special limitation on spousal testimony in bankruptcy cases is warranted. *Cf.* McCormick, *Evidence,* 179–80 (1954); Hutchins & Slesinger, *Some Observations on the Law of Evidence: Family Relations,* 13 Minn. L.Rev. 675 (1929).

Subdivision (e) clarifies the mode of compelling attendance of a witness or party for an examination and for the production of evidence under this rule. The subdivision is substantially declaratory of the practice that has developed under § 21a of the Act. See 2 Collier ¶21.20 (1964). The special limitation of the proviso of § 41a of the Act that protects a person other than the bankrupt from being required to atttend as a witness before a referee at a place over 100 miles from his residence even though within the same district is not retained in the rules. The governing limits for such a person are those prescribed by Rule 45(e)(1) of the Federal Rules of Civil Procedure, made applicable to examinations under this rule by subdivision (e) and Rule 916.

Subdivision (f) is derived from the second proviso of § 7a(10) of the Act and is not a limitation on subdivision (e). Any person, including the bankrupt, served with a subpoena within the range of a subpoena must attend for examination pursuant to subdivision (e). Subdivision (f) applies only to the bankrupt. There are no territorial limits on the service of an order on the bankrupt. See, *e.g., In re Totem Lodge & Country Club, Inc.*, 134 F. Supp. 158 (S.D.N.Y. 1955).

Subdivision (g) is a revision of the first proviso of § 7a (10) and the proviso of § 41a of the Act. The lawful mileage and fee for attendance at a United States court as a witness are prescribed by 28 U.S.C. § 1821.

Definition of bankrupt. The word "bankrupt" as used in this rule includes the persons specified in the definition in Rule 901(6).

Rule 206 Apprehension and Removal of Bankrupt to Compel Attendance for Examination.

(a) Order to Compel Attendance for Examination.

Upon a verified application of any party in interest alleging (1) that the examination of the bankrupt is necessary for the proper administration of the estate and that there is reasonable cause to believe that the bankrupt is about to leave his residence or his principal place of business to avoid examination, or (2) that he has evaded service of a subpoena or of an order to attend for examination, or (3) that he has willfully disobeyed a subpoena or order to attend for examination, duly served upon him, the court may issue to the marshal, or some other officer authorized by law, an order directing him to bring the bankrupt forthwith before the court. If after hearing the court finds the allegations to be true, the court shall thereupon examine the bankrupt or cause him to be examined as soon as possible, but, in any event, the examination shall be commenced within 10 days after he was taken into custody. If it is necessary, the court shall fix conditions for further examination and for the bankrupt's obedience to all orders made in reference thereto.

(b) Removal.

Whenever any order to bring the bankrupt before the court is issued under this rule and he is found in a district other than that of the court issuing the order, he may be taken into custody under such order and removed in accordance with the following rules:

(1) If taken at a place less than 100 miles from the place of issue of the order, the bankrupt shall be brought forthwith before the court that issued the order.

(2) If taken at a place 100 miles or more from the place of issue of the order, the bankrupt shall be brought without unnecessary delay before the nearest magistrate, referee in bankruptcy, or district judge. If, after hearing, the magistrate, referee, or district judge finds that an order has issued under this rule and that the person in custody is the bankrupt, or if the person in custody waives a hearing, the magistrate, referee, or district judge shall issue an order of removal and the person in custody shall be released on conditions assuring his prompt appearance before the court which issued the order to compel his attendance.

(c) Conditions of Release.

In determining what conditions will reasonably assure attendance or obedience under subdivision (a) of this rule or appearance under subdivision (b) of this rule, the court shall be governed by the provisions and policies of Title 18, U.S.C. § 3146(a) and (b).

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This rule is an elaboration of § 10 of the Act. Subdivision (a) is closely patterned on the corresponding subdivision of the statutory section, but the rule requires the bankrupt to be examined as soon as possible if allegations of the applicant for compulsory examination under this rule are found to be true after a hearing. Subdivision (b) is also derived from the corresponding subdivision of § 10 of the Act but includes in paragraphs (1) and (2) provisions adapted from subdivisions (a) and (b) of Rule 40 of the Federal Rules of Criminal Procedure, which governs the handling of a person arrested in one district on a warrant issued in another. Subdivision (c) incorporates by reference the features of subdivisions (a) and (b) of 18 U.S.C. § 3146, which prescribe standards, procedures and factors to be considered in determining conditions of release of accused persons in noncapital cases prior to trial. The word "bankrupt" as used in this rule includes the persons named in Rule 901(6).

An order issued under this rule need not be under seal or signed by the clerk of the district court. *In re Markel*, 195 F.Supp. 926 (E.D.Mich. 1961), holding warrants issued by a referee in bankruptcy for the Eastern District of Michigan for the arrest of bankrupts in California to be invalid for noncompliance with General Order 3, would not be authoritative after repeal of the general order and adoption of this rule.

Rule 207. Voting at Creditors' Meetings.

(a) Right to Vote; Temporary Allowance for Voting Purposes.

Except as hereinafter provided, a creditor is entitled to vote at a meeting if he has filed a proof of claim at or before the meeting, unless objection is made or unless the proof of claim is insufficient on its face. Notwithstanding objection to the amount or allowability of a claim for the purpose of voting, the court may temporarily allow it for that purpose in such amount as to the court seems proper.

(b) Majority Vote; Creditors with Claims of $100 or Less.

The trustee and the creditors' committee, if any, shall be elected by a majority vote in number and amount of claims of all creditors who are present and voting in person or by proxy. A claim of $100 or less shall be included in computing the amount, but the holder of such a claim shall not be counted in computing the number of creditors voting.

(c) Creditors with Secured or Priority Claims.

A creditor holding a claim which is secured or has priority shall be entitled to vote such claim only to the extent the claim exceeds the value of his security or the amount of his priority.

(d) Creditors Excluded from Voting.

The following creditors shall not be entitled to vote: a relative or affiliate of the bankrupt; a director or trustee or a stockholder, member, or officer of the bankrupt corporation; a general partner, limited partner, or person in control of the bankrupt partnership; or a person having an interest materially adverse to the estate.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule brings together provisions in §§ 44a, 56, and 57e of the Act dealing with voting and makes some changes.

Subdivision (a) accords any creditor who has filed a proof of claim not insufficient on its face a right to vote unless an objector overcomes the presumptive correctness attaching to the proof of claim under Rule 301(b). *Cf. In re Lenrick Sales, Inc.*, 369 F. 2d 439, 442–43 (3d Cir.), cert. denied, 389 U.S. 822 (1967). The second sentence of subdivision (a) is adapted from, but goes beyond, § 57e of the Act. It recognizes the necessity for prompt disposition of objections to claims for the purpose of voting and vests discretion in the court to make a temporary allowance for that purpose without determining the amount or allowability of the claim for the purpose of distribution.

Subdivision (*b*) combines subdivisions a and c of § 56 of the Act but takes inflation into account by doubling the amount of the minimum claim to be counted in computing the majority in number of the creditors voting at a creditors' meeting. Creditors holding claims of $50 or less were first excluded from the numerical count of the majority by the Chandel Act in 1938 in order to restrict the power that could be exerted in creditors' meetings by those who had been able to acquire proxies from a large number of creditors with small claims. H.R. Rep. No. 1409, 75th Cong., 1st sess. 14 (1937). The increase in the minimum is in furtherance of the policy of the rules to protect bankruptcy administration against domination by those who solicit proxies for the ulterior purpose of controlling and participating in the administration.

Subdivision (*c*) is a revision of the wording § 56b of the Act without change in the meaning.

Subdivison (*d*) is an adaptation of language in § 44 excluding certain classes of persons from participating in the election of a trustee. The rule adds to the list of excluded persons, partners and persons in control of bankrupt partnerships and persons in general who have interests materially adverse to the estate.

Rule 208. Solicitation and Voting of Proxies.

(a) Definitions.

(1) *Proxy*. A proxy includes a power of attorney, proof of claim, or other writing authorizing any person who does not then own a claim to vote the claim or otherwise act as the owner's attorney in fact in connection with the administration of an estate in bankruptcy.

(2) *Solicitation of Proxy*. The solicitation of a proxy is any communication, other than one from an attorney to a regular client who owns a claim or from an attorney to the owner of a claim who has requested the attorney to represent him, by which a creditor is asked, directly or indirectly, to give a proxy after or in contemplation of the filing of a petition by or against the bankrupt.

(b) Authorized Solicitation.

(1) A proxy may be solicited only by (A) a creditor owning a provable claim against the estate on the date of the filing of the petition; (B) a committee elected under Rule 214; (C) a committee of creditors selected by a majority in number and amount of claims of creditors whose claims are not contingent or unliquidated, who are not disqualified from voting under Rule 207 (c) or (d), and who were present or represented at a meeting of which all creditors having claims of over $500, or the 100 creditors having the largest claims, had at least 5 days' notice in writing and of which meeting written minutes were kept and are available reporting the names of the creditors present or represented and voting and the amounts of their claims; or (D) a bona fide trade or credit association, but such association may solicit only creditors who were its members or subscribers in good standing and had provable claims on the date of the filing of the petition.

(2) A proxy may be solicited only in writing.

(c) Solicitation Not Authorized.

This rule shall not be construed to permit solicitation (1) in any interest other than that of general creditors; (2) by or on behalf of any person who has taken charge of property of the bankrupt as a receiver or trustee or an assignee for the benefit of creditors; (3) by or on behalf of any person disqualified from voting under Rule 207 (c) or (d); (4) by or on behalf of an attorney at law; or (5) by or on behalf of a transferee of a claim for collection only.

(d) Data Required from Holders of Multiple Proxies.

At any time before the voting commences at any meeting of creditors held under Rule 204, or at such other time as the court may direct, a holder of 2 or more proxies must file with the court a verified list of the proxies to be voted and a verified statement of the pertinent facts and circumstances in connection with the execution and delivery of the proxies, including with respect to each of the proxies that was solicited, whether by the proxyholder or by any other person, the following:

(1) A copy of the solicitation;

(2) identification of the solicitor, the forwarder, if he is neither the solicitor nor the owner of the claim, and the proxyholder, including their connections with the bankrupt and with each other, and if the solicitor, forwarder, or proxyholder is an association, a statement that the creditors whose claims have been solicited and the creditors whose claims are to be voted were members or subscribers in good standing and had provable claims on the date of the filing of the petition, or if the solicitor, forwarder, or proxyholder is a committee of creditors, the date and place the committee was organized, a statement that the committee was organized in accordance with clause (B) or (C) of paragraph (b)(1) of this rule, the members of the committee, the amounts of their claims, when the claims were acquired, the amounts paid therefor, and the extent to which the claims of the committee members are secured or entitled to priority;

(3) a statement that no consideration has been paid or promised by the proxyholder for the proxy;

(4) a statement as to whether there is any agreement, and, if so, the particulars thereof, between the proxyholder and any other person for the payment of any consideration in connection with voting the proxy, or for the sharing of compensation with any person, other than a member or regular associate of his law firm, which may be allowed the trustee or any person for services rendered in the case, or for the employment of any person as attorney, accountant, appraiser, auctioneer, or other employee for the estate;

(5) if the proxy was solicited by a person other than the proxyholder, a statement signed and verified by the solicitor that no consideration has been paid or promised by him for the proxy, and a statement signed and verified by him as to whether there is any agreement, and, if so, the particulars thereof, between the solicitor and any other person for the payment of any consideration in connection with voting the proxy, or for the sharing of compensation with any person, other than a member or regular associate of his law firm which may be allowed the trustee or any person for services rendered in the case, or for the employment of

any person as attorney, accountant, appraiser, auctioneer, or other employee for the estate;

(6) if the proxy was forwarded to the holder by a person who is neither a solicitor of the proxy nor the owner of the claim, a statement signed and verified by the forwarder that no consideration has been paid or promised by him for the proxy, and a statement signed and verified by him as to whether there is any agreement between the forwarder and any other person for the payment of any consideration in connection with the voting of the proxy, or for the sharing of compensation with any person, other than a member or regular associate of his law firm, which may be allowed the trustee or any person for services rendered in the case, or for the employment of any person as attorney, accountant, appraiser, auctioneer, or other employee for the estate; and

(7) if the solicitor, forwarder, or proxyholder is a committee, a statement signed and verified by each member as to the amount and source of any consideration paid or to be paid to such member in connection with the case other than by way of dividend on his claim.

(e) Enforcement of Restrictions on Solicitation. The court on its own initiative or on application or motion of any party in interest may determine whether there has been a failure to comply with the provisions of this rule or any other impropriety in connection with the solicitation or voting of a proxy. After such hearing as may be appropriate, the court may reject any proxy for cause, vacate any order entered in consequence of the voting of any proxy which should have been rejected, or take any other or further appropriate action.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is a comprehensive regulation of solicitation and voting of provies in bankruptcy cases. Heretofore regulation has been a matter of patchwork; General Order 39 is a narrow proscription of the solicitation of a proof of claim, power of attorney, or other kind of proxy by a receiver or his attorney. Chapter X (in §§ 209–13) and § 77(p) of the Act contain provisions dealing with the solicitation and exercise of proxies only in reorganization proceedings. A body of judicial precedents has evolved which sustains the rejection of proxies because of impropriety in connection with their solicitation. Finally, a number of courts of bankruptcy have adopted local rules regulating solicitation and voting of proxies.

The rule here proposed includes features drawn from all these sources. Most suggestive have been the local bankruptcy rules dealing with solicitation in effect in the Northern Districts of Illinois (Bankr. Rule 10) and Ohio (Bankr. Rule 4) and in the Southern and Eastern Districts of New York (Bankr. Rule 15).

Subdivision (a). The definition of proxy in the first paragraph of the rule is in large part a rephrasing of General Order 39. The definition of solicitation in the succeeding paragraph follows closely the definition found in Rule 4(g)(1) of the Bankruptcy Rules for the Northern District of Ohio.

Creditor control is a basic feature of the Act. Creditor participation in administration is facilitated by the definition of "creditor" in the Act (§ 1(11)) to include the duly authorized agent, attorney, or proxy of the owner of a provable claim. Creditor democracy is perverted and the congressional objective frustrated, however, if control of administration falls into the hands of persons whose principal interest is not in what the estate can be made to yield to the unsecured creditors but in what it can yield to those involved in its administration or in other ulterior objectives.

Subdivision (b). The purpose of the rule is to protect creditors against loss of control of administration of their debtors' estates in bankruptcy to holders of proxies having interests that differ from those of the creditors. The rule does not prohibit solicitation but restricts it to those who were creditors at the commencement of the case or their freely and fairly selected representatives. The special role occupied by credit and trade associations in bankruptcy administration is recognized in the last clause of subdivision (b)(1). On the assumption that members or subscribers may have affiliated with an association in part for the purpose of obtaining its services as a representative in bankruptcy proceedings, an established association is authorized to solicit its own members, or its regular customers or clients, who were creditors on the date of the filing of the petition. Although the association may not solicit nonmembers or nonsubscribers for proxies, it may sponsor a meeting of creditors at which a committee entitled to solicit proxies may be selected in accordance with clause (B) or (C) of subdivision (b)(1). See Comment, 51 Yale L.J. 253, 266–68 (1941).

Subdivision (c). A creditor, creditors' committee, or association may, however, have such a relation to the estate or the case as to warrant rejection of any proxy solicited by such a person or group. Thus a person who is forbidden by the Act to vote his own claim should be equally disabled to solicit proxies from creditors. Solicitation by or on behalf of the bankrupt has been uniformly condemned, *e.g., In re White,* 15 F. 2d 371 (9th Cir. 1926), as has solicitation on behalf of a preferred creditor, *Matter of Law,* 13 Am.B.R. 650 (S.D. Ill. 1905). The pronibition on solicitation by a receiver or his attorney made explicit by General Order 39 has been collaterally supported by rulings rejecting proxies solicited by a receiver in equity, *In re Western States Bldg.-Loan Ass'n.* 54 F. 2d 415 (S.D. Cal. 1931), and by an assignee for the benefit of creditors, *Lines v. Falstaff Brewing Co.,* 233 F. 2d. 927 (9th Cir. 1956).

Subdivision (c) negates a reading of the rule to authorize solicitation by any persons or group standing in any of the relations described in the preceding paragraph. It also disavows any dispensation to attorneys or to transferees of claims for collection. The rule does not undertake to regulate communications between an attorney and his regular client or between an attorney and a creditor who has asked the attorney to represent him in a proceeding under the Act, but any other communication by an attorney or any other person or group requesting a proxy from the owner of a claim constitutes a regulated solicitation. Solicitation by an attorney of a proxy from a creditor who was not a client prior to the solicitation is not objectionable merely as unethical conduct, as recognized by such cases as *In re Darland,* 184 F. Supp. 760 (S.D. Iowa 1960; more importantly the practice carries a substantial risk that administration will fall into the hands of those whose interest is in the yields of administration to the administrators rather than to the rightful beneficiaries. The same risk attaches to solicitation by the holder of a claim for collection only.

Subdivision (d). The regulation of solicitation and voting of proxies is to be effectuated by the rule principally through the imposition of requirements of disclosure on the holders of 2 or more proxies. The disclosures must be made to the court before the meeting at which the proxies are to be voted to afford the court an opportunity to examine the circumstances accompanying the acquisition of the proxies in advance of any exercise of the proxies. In the light of its examination the court may permit the proxies that comply with the rule to be voted and reject those that do not unless the holders can effect or establish compliance in such manner as the court shall prescribe. The holders of single proxies are excused from the disclosure requirements because of the insubstantially of the risk that such proxies have been solicited, or will be voted, in an interest other than that of general creditors.

Every holder of 2 or more proxies must include in his submission to court a verified statement that no consideration has been paid or promised for the proxy, either by the proxy-holder or the solicitor or any forwarder of the proxy. Any payment or promise of consideration for a proxy would be conclusive evidence of a purpose to acquire control of the administration of an estate for an ulterior purpose. The holder of multiple proxies must also include in his submission a verified statement as to whether there is any agreement by himself, the solicitor, or any forwarder of the proxy for the employment of any person in the administration of an estate or for the sharing of any compensation allowed in connection with the administration of the estate. The provisions requiring these statements implement the policy of the Act expressed in § 62c as well as the policy of this rule to deter the acquisition of proxies for the purpose of obtaining a share in the outlays for administration. Finally the facts as to any consideration moving or promised to any member of a committee which functions as a solicitor, forwarder, or proxyholder must be disclosed by the proxyholder. Such information would be of significance to the court in evaluating the purpose of the committee in obtaining, transmitting, or voting proxies.

Subdivision (*e*) has counterparts in the local rules referred to earlier in this Note. Courts have been accorded a wide range of discretion in the handling of disputes involving proxies. Thus the referee has been allowed to reject proxies and to proceed forthwith to hold a scheduled election at the same meeting. *E.g., In re Portage Wholesale Co.*, 183 F. 2d 959 (7th Cir. 1950); *In re McGill*, 106 Fed. 57 (6th Cir. 1901); *In re Deena Woolen Mills, Inc.*, 144 F. Supp. 260, 273 (D. Me. 1953); *In re Finlay*, 3 Am.B.R., 738 (S.D.N.Y., 1900). The bankruptcy judge may, of course, postpone an election to permit a determination of issues presented by a dispute as to proxies and to afford those creditors whose proxies are rejected an opportunity to give new proxies or to attend an adjourned meeting to vote their own claims. *Cf. In re Lenrick Sales, Inc.*, 369 F. 2d 439, 442–43 (3d Cir.), cert. denied, 389 U.S. 822 (1967); *In re Construction Supply Corp.*, 221 F. Supp. 124, 128 (E.D.Va. 1963). This rule is not intended to restrict the scope of the court's discretion in the handling of disputes as to proxies.

Rule 209. Selection of Trustee.

(a) Election at First Meeting.

The creditors of a bankrupt entitled to vote under Rules 207 and 208 shall elect a trustee at the first meeting, subject to approval by the court and to the provisions of this rule.

(b) Appointment by the Court.

Except as provided in Rule 211, the court shall appoint a trustee if (1) the creditors do not elect a trustee; (2) the trustee elected fails to qualify; (3) a vacancy occurs in the office of trustee; or (4) a trustee is needed in a reopened case. If an elected trustee is disapproved by the court for ineligibility or other good cause, the court may appoint a trustee.

(c) Notice to Trustee of His Election or Appointment; Qualification.

The court shall immediately notify the trustee of his election or appointment. The court shall also inform him as to how he may qualify, including the penal sum of his bond if required, and of the time fixed for the filing of a complaint objecting to the bankrupt's discharge, and shall require him forthwith to notify the court of his acceptance or rejection of the office. A trustee shall qualify as provided in Rule 212.

(d) Eligibility.

A trustee shall have no interest adverse to the estate and shall be competent to perform the duties of his office. If an individual, he shall have a residence or office in the state in which the case is pending or in any adjacent state, and, if a corporation, it shall be authorized by its charter or by law to act as trustee and have an office in the state in which the case is pending.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivisions (*a*) *and* (*b*). Subdivision (a) and the first sentence of subdivision (b) of this rule are derived from §§ 2a(17) and 44a of the Act. The option to elect 3 trustees of an estate authorized by § 44a is little used and is eliminated as unnecessary. The provision of § 44a for the appointment by the court of the trustee of a bankrupt face-amount certificate company, added to § 44a by the Investment Company Act of 1940, has likewise not been carried into the rule. It has not been applied in any reported case and appears to have had a transitional purpose. The second sentence of subdivision (b) clarifies the authority of the court to appoint a trustee whenever the creditors' choice of trustee is disapproved by the court, and follows the law as declared in *In re Eloise Curtis, Inc.*, 388 F.2d 416, 418–20 (2d Cir. 1967); 2 Collier ¶ 44.11 (1962). But *cf.* 2 Remington, *Bankruptcy* 562–63 (Henderson ed. 1956). The court's discretion to disapprove a trustee elected by the creditors is circumscribed, however, by the consideration that it must be based on a substantial reason appearing in the record. See generally 2 Collier ¶¶ 44.06–44.11 (1962); MacLachlan, *Bankruptcy* § 96 (1956); 2 Remington, *Bankruptcy* §§ 1092–1103 (Henderson ed. 1956).

Subdivisions (*c*) *and* (*d*). Subdivision (c) is derived from General Order 16, and subdivision (d) is a revision of § 45 of the Act. The requirement of the first sentence of subdivision (d) that the trustee have no interest adverse to the estate has been established by case law. MacLachlan, *supra*. Although § 45 of the Act has imposed a requirement of competence only in respect to an individual receiver or trustee, a corporation is neither to be excused from such a requirement nor to be conclusively presumed to be competent. See MacLachlan, *supra*. The requirement respecting a residence or office location for an individual trustee has been relaxed by the rule. The requirement of § 45(1) of the Act that an individual trustee be a resident or have an office in the judicial district within which he is appointed is unnecessarily restrictive in light of the development of metropolitan and suburban communities that cross district and state boundaries. This development does not appear to warrant a comparable relaxation respecting corporate trustees, however. Rule 213 continues the policy of the Act of June 7, 1934, 48 Stat. 923, against undue concentration of appointments of trustees, and Rule 505 contains safeguards against nepotism, undue influence, and conflict of interest in such appointments. Rule 503 incorporates the disqualification, by § 39b(2) of the Act, of a referee to act as trustee in any case.

Eligibility of receiver. The requirements of § 45 of the Act pertaining to receivers are preserved as provided in Rule 201(f).

Rule 210. Trustees for Estates When Joint Administration Ordered.

(a) Election of Single Trustee for Estates Being Jointly Administered.

If the court orders a joint administration of 2 or more estates pursuant to Rule 117(b), it may approve election of a single trustee by the creditors of one or more of the bankrupts for the estates being jointly administered.

(b) Right of Creditors to Elect Separate Trustee.

Notwithstanding entry of an order for joint administration pursuant to Rule 117(b) the creditors of any bankrupt may elect a separate trustee for his estate as provided in Rule 209(a).

(c) Appointment of Trustees for Estates Being Jointly Administered.

If the creditors do not elect a trustee under subdivision (a) or (b) of this rule, the court may appoint one or more trustees for the estates being jointly administered.

(d) Potential Conflicts of Interest.

Before approving the election or appointment of one trustee for estates being jointly administered as provided in subdivision (a) or (c) of this rule, the court must be satisfied that the creditors of the different estates will not be prejudiced by conflicts of interest of the trustee.

(e) Trustee for Partnership and Partners' Individual Estates.

Notwithstanding the foregoing provisions of this rule, the trustee of a bankrupt partnership shall also be the trustee of the individual estate of any general partner ordered pursuant to Rule 117(b) to be administered jointly, unless the court, for cause shown, either (1) permits the creditors of a general partner to elect a separate trustee or (2) appoints a separate trustee for the individual estate.

(f) Separate Accounts.

The trustee or trustees of estates being jointly administered shall nevertheless keep separate accounts of the property and distribution of each estate.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule recognizes that economical and expeditious administration of 2 or more estates may be facilitated not only by the selection of a single trustee for a partnership and its partners, as now authorized by § 5c of the Act, but by such selection whenever estates are being jointly administered pursuant to Rule 117. See *In re Internationgl Oil Co.*, 427 F.2d 186, 187 (2d Cir. 1970). The premise of § 5c of the Act is that, notwithstanding the potentiality of conflict between the interests of the creditors of the partners and those of the creditors of the partnership, the conflict is not sufficiently serious or frequent in most cases to warrant the selection of separate trustees for the firm and the several partners. Even before the proviso was added to § 5c of the Act in 1938 to permit the creditors of a general partner to elect their separate trustee for his estate, it was held that the court had discretion to permit such an election or to make a separate appointment when a conflict of interest was recognized. *In re Wood*, 248 Fed. 246, 249–50 (6th Cir.), cert. denied, 247 U.S. 512 (1948); 1 Collier ¶ 5.18 (1962). The rule retains in subdivision (e) the features of the practice respecting the selection of a trustee that has developed under § 5 of the Act. Subdivisions (a) and (c) permit the court to authorize election of a single trustee or to make a single appointment when joint administration of estates of other kinds of bankrupts is ordered, but subdivision (d) requires the court to make a preliminary evaluation of the risks of conflict of interest. If after the election or appointment of a common trustee a conflict of interest materializes, the court must take special and appropriate action to deal with it.

Subdivision (f) is derived from § 5e of the Act and extends the duty of keeping a separate account for each estate to trustees in all cases of joint administration.

Rule 211. Trustee Not Appointed in Certain Cases.

If, after examination of the bankrupt, the court determines that there is no property in the estate other than that which can be claimed as exempt and that no other circumstances indicate the need for a trustee, and if the creditors do not elect a trustee, the court may order that no trustee be appointed. At any time thereafter, for cause shown, a trustee may be appointed by the court.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is a revision of General Order 15 to spell out more fully the circumstances that may warrant proceeding with the administration of an estate without a trustee. The last sentence of General Order 15 is deleted as unnecessary. See Rule 204.

Rule 212. Qualification by Trustee and Receiver.

(a) Qualifying Bond or Security.

Except as provided hereinafter, every trustee and every receiver shall, before entering upon the performance of his official duties and within 5 days after his election or appointment, qualify by filing a bond in favor of the United States conditioned on the faithful performance of his official duties or by giving such other security as may be approved by the court.

(b) Blanket Bond.

The court may authorize a blanket bond in favor of the United States conditioned on the faithful performance of official duties by a trustee or receiver in more than one case or by more than one trustee or receiver.

(c) Bond Excused in Certain Cases.

The court may excuse the filing of a bond or the giving of other security (1) by a trustee or receiver when there appears to be an insufficient amount of property in the estate to justify the requirement of a bond or security, or (2) by a receiver when he will not be a custodian of any property.

(d) Qualification by Filing Acceptance.

A trustee or receiver for whom a blanket bond has been filed pursuant to subdivision (b) of this rule or who is excused from filing a bond or giving security pursuant to subdivision (c) hereof shall qualify his acceptance of his election or appointment in lieu of the bond.

(e) Amount of Bond and Sufficiency of Surety.

The court shall determine the amount of the bond and the sufficiency of the surety for each bond filed under this rule.

(f) Filing of Bond; Proceeding on Bond.

Unless otherwise provided by local rule, a bond given under this rule shall be filed with the referee. A proceeding on the bond of a trustee or receiver may be brought by any party in interest in the name of the United States for the use of the person injured by the breach of the condition. No proceeding shall be brought on a trustee's or receiver's bond more than 2 years after his discharge.

(g) Evidence of Qualification.

A certified copy of the order approving the bond or other security given by a trustee or receiver under subdivision (a) or of his acceptance filed under subdivision (d) of this rule shall constitute conclusive evidence of his qualification.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (a) of this rule is based on § 50b of the Act but recognizes that security other than a bond may be given by a trustee or receiver as a mode of qualifying under the rule.

Subdivisions (b), (c), and (d). Subdivision (b), which is new, gives explicit authority for approval by the court of a single bond to cover (1) a person who qualifies as trustee (or receiver) in a number of cases, and (2) a number of trustees (or receivers) each of whom qualifies in a different case. The gases need not be related in any way. Substantial economies can be effected if a single bond covering a number of different cases can be issued and approved at one time. The interests of economy and expeditious administration can also be served by eliminating pursuant to subdivision (c) the necessity for a bond in no-asset cases and those in which the property in the estate is so insubstantial in amount and value as to make the bond a needless expense. When a blanket bond is filed or the giving of a bond or other security is waived altogether, the trustee or receiver qualifies under subdivision (d) of the rule by filing an acceptance of the office.

Subdivision (e) vests general authority and responsibility in the court for determining the adequacy of the bond and the sufficiency of the sureties thereon in lieu of the detailed provisions in subdivisions b, c, d, e, f, and g of § 50 of the Act that deal with these matters.

Subdivision (f) is derived from § 50h and m of the Act. The sentence requiring the bond generally to be filed with the referee, rather than the clerk of the court as provided in § 50h, is consonant with the provision in Rule 509(a) that after reference all papers shall be filed with the referee. A bond filed under this rule should conform to Official Form No. 19. A proceeding on the bond of a trustee or receiver is governed by the rules in Part VII. See the Note accompanying Rule 701. See also Rule 925.

Subdivision (g) is a revision of § 21e of the Act to prescribe the evidentiary effect of a certified copy of an order approving any security given by a trustee or receiver under this rule or, when a blanket bond has been authorized, of a certified copy of his acceptance. This rule supplements the Federal Rules of Evidence, which apply in bankruptcy cases. See Rule 917. A certified copy of the order approving the trustee's bond may be recorded in accordance with Rule 602(a) and given the effect of constructive notice of the pendency of the bankruptcy case as provided in § 21g of the Act. The order of approval should conform to Official Form No. 20.

Omitted provisions of § 50 of Act. The requirement of a referee's bond has been abolished (see Rule 502), and the numerous references to the referee's bond in § 50 of the Act are no longer necessary. The provision for joint and several bonds in § 50j of the Act has not been retained since joint receivers and joint trustees are not authorized in the rules. The bond of a designated depository is dealt with in Rule 512. The provision in § 50k of the Act stating the effect of a failure to file a bond is omitted from the rules as unnecessary.

Rule 213. Limitation on Appointment of Receivers and Trustees.

No standing receiver or trustee may be appointed. Appointments of receivers and trustees by the court shall be apportioned so that the aggregate compensation of any one appointee shall not be excessive.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is an elaboration of General Order 14. Its prohibition on the appointment of "official" and "general" trustees is revised to extend to "standing receivers and trustees." The latter term comprehends both official and general trustees and is a more familiar description of such officers. The policy underlying the general order is as much opposed to standing receivers as to standing trustees.

The rule also reflects the policy of the Act of June 7, 1934, 48 Stat. 923, 11 U.S.C. § 76a (1964), in requiring an apportionment of appointments of receivers and trustees to keep compensation of such appointees from becoming excessive. The rule does not restrict the election of trustees by creditors under Rule 209.

Rule 214. Creditors' Committee.

The creditors entitled to vote for a trustee may, at the first meeting of creditors or at any special meeting called for that purpose, elect a committee of 3 or more creditors. The committee may consult with the trustee in connection with the administration of the estate, make recommendations to the trustee respecting the performance of his duties, and submit to the court any question affecting the administration of the estate.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is derived from § 44b of the Act. The provision for election of the committee at a special meeting of creditors is new.

Rule 215. Employment of Attorneys and Accountants.

(a) Conditions of Employment of Attorneys and Accountants.

No attorney or accountant for the trustee or receiver shall be employed except upon order of the court. The order shall be made only upon application of the trustee or receiver, stating the specific facts showing the necessity for such employment, the name of the attorney or accountant, the reasons for his selection, the professional services he is to render, and to the best of the applicant's knowledge all of the attorney's or accountant's connections with the bankrupt, the creditors or any other party in interest, and their respective attorneys and accountants. If the attorney or accountant represents or holds no interest adverse to the estate in the matters upon which he is to be engaged, and his employment is in the best interest of the estate, the court may authorize his employment. Notwithstanding the foregoing sentence, the court may authorize the employment of an attorney or accountant who has been employed by the bankrupt when such employment is in the best interest of the estate. The employment of any attorney or accountant shall be only for the purposes specified in the order, but the court may authorize a general retainer of an attorney when necessity therefor is shown.

(b) Employment of Attorney or Accountant with Adverse Interest.

If without disclosure any attorney or accountant employed by the trustee or receiver shall represent or hold, or shall have represented or held, any interest adverse to the estate in any matter upon which he is so employed, the court may deny the allowance of any compensation to such attorney or accountant, or the reimbursement of his expenses, or both, and may also deny any allowance to the trustee or receiver if it shall appear that he failed to make diligent inquiry into the connections of such attorney or accountant.

(c) Employment by a General Creditor.

An attorney or accountant shall not be disqualified to act as attorney or accountant for the trustee or the receiver merely because of his employment by a general creditor in the case.

(d) Employment of Attorney or Accountant on Salary.

A trustee or receiver authorized to operate the business and manage the property of the bankrupt may, without specific authorization under subdivision (a) of this rule, continue or engage any attorney or accountant as a salaried employee if such employment is necessary in the operation of the business and management of the property of the bankrupt.

(e) Employment of Trustee or Receiver as Attorney or Accountant.

The court may authorize the trustee or receiver to act as an attorney or accountant for the estate if such authorization is in the best interest of the estate.

(f) Services Rendered by Member or Associate of Firm of Attorneys or Accountants.

If, under this rule, a law partnership or corporation is employed as an attorney, or an accounting partnership or corporation is employed as an accountant, or if a named attorney or accountant is employed on behalf of a professional partnership or corporation, any member or regular associate of the firm may act for the attorney or accountant so employed, without further order of the court, and his services may be compensated as services of the attorney or accountant in accordance with Rule 219.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivisions (a) and (b) of this rule are a revision of General Order 44. Subdivision (c) is an adaptation of § 44c of the Act. Subdivisions (d), (e), and (f) are new. The rule assimilates the employment of accountants and attorneys in cases under the Act. The premise of this change is that the same standards for determining disinterestedness, qualifications, and the need for professional services should be applied with respect to accountants as are now applicable to attorneys.

The rule recognizes that the holding as well as the representation of an interest adverse to the estate may have a disqualifying effect on an attorney or accountant and should therefore be disclosed to the court before his employment is authorized. The sanction of disallowance for nondisclosure of an adverse interest is also extended so as to apply to the situation where an attorney or accountant, after his employment has been duly authorized under this rule, represents or acquires an interest adverse to the estate in a matter on which he is employed.

Subdivision (*a*) The verification heretofore required by the first sentence of General Order 44 has been deleted in accordance with the policy expressed in Rule 911. The word "application" in the same sentence of the general order is substituted for "petition" in recognition of the statutory definition of petition in § 1(24) to mean a document initiating proceeding under the Act. A new sentence in subdivision (a) authorizes re-employment of an attorney in certain cases, notwithstanding his prior connection with the bankrupt, in order to permit the utilization of special knowledge and experience which may be of substantial benefit to the estate.

Subdivision (*b*) is an adaptation of the third sentence of General Order 44. The word "estate" has been substituted in lieu of the reference in this sentence of the general order to "the receiver, trustee, creditors or stockholders." The interests of stockholders may not be identical to those of the receiver, trustee, or creditors, but insofar as the interests of the estate may not embrace those of stockholders, the substitution of the less comprehensive terms is not objectionable. The representation or holding of an undisclosed interest in no way adverse. to the estate should afford the court no basis for denying compensation to an attorney or accountant because the interest is adverse to the stockholders. Indeed, effective representation of a trustee or receiver by an attorney seems likely to run counter to the interests of the stockholders in a considerable number of cases, and such representation should not be discouraged by these rules.

Subdivision (*c*), like § 44c of the Act, rests on the premise that the interests of all general creditors of a bankrupt are identical. Thus an attorney who has previously represented a general creditor, or is representing him in connection with the bankruptcy of his client's debtor, is not ordinarily subject to any conflict of interest. The term "general creditor" is used in the same sense here as in § 44c, *viz.*, a creditor without security and without any priority under § 64 of the Act. Analysis of H.R. 12889, 74th Cong., 2d Sess. 158 (1936). Of course, if there is a question as to the validity or the amount of a general creditor's claim, his attorney would be subject to a disqualifying interest. See 2 Collier 1681 n. 5 (1962).

Subdivision (*d*) is added to negative any inference that this rule is intended to require a specific court authorization of the employment of salaried attorneys or accountants when such employment is usual and necessary in the operation of the bankrupt's business when continued by order of the court. A general authorization to conduct a bankrupt's business implies the grant of authority to hire employees reasonably required for such operation, without specific prior approval of each employment by the court. 3A Collier ¶ 62.15 (1961; 6A id. ¶ 8.14[1] (1965; 8 *id.* ¶ 6.35 (1963). A court may nevertheless particularize in an order approving the continued operation of a bankrupt's business the extent of authority granted with respect to the employment of personnel.

Subdivision (*e*) recognizes the propriety of an order of the court authorizing a trustee or receiver to act as his own attorney or accountant but requires the court to find that such an authorization is in the best interest of the estate. In conjunction with Rule 219 subdivision (e) establishes the necessity of an order of authorization as a condition of any allowance of compensation for professional services rendered as an attorney or accountant for the estate. *See In re Mabson Lbr. Co.*, 394 F.2d 23, 24 n.3 (2d Cir. 1968). It is not intended that such an authorization should be required or compensation allowed for the performance of the ordinary duties of a trustee, including the collection of accounts, preparation of required records and reports, protection of the estate against unfounded claims, etc.

Subdivision (*f*), together with the definitions of "attorney" and "accountant" in Rule 901, recognizes the propriety of the employment of a professional corporation or partnership as an attorney or accountant under this rule. The subdivision clarifies the effect of an order authorizing the employment of a firm, or of an attorney or accountant on behalf of a firm, so that members or regular associates of the firm may perform compensable services for the attorney or accountant employed by the court without the necessity of a particular court order identifying each such member or regular associate authorized to render such services.

Rule 216. Authorization of Trustee to Conduct Business of Bankrupt.

The court may authorize the trustee to conduct the business and manage the property of the bankrupt for such time and on such conditions as may be in the best interest of the estate and consistent with orderly liquidation thereof.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule, together with Rules 201(a)(2) and 202, permits continuation of the bankrupt's business on authorization of the court as heretofore provided in § 2a(5) of the Act. The business of a bankrupt should not be continued indefinitely nor for a term longer than is consistent with the bankruptcy objective of orderly liquidation of the estate. *See In re Airlines Transport Carriers, Inc.*, 129 F. Supp. 679, 683 (S.D. Cal. 1955); *In re Lisk Mfg. Co.*, 167 Fed. 411, 413–14 (W.D.N.Y. 1908); 1 Collier ¶ 2.34 (1968).

Rule 217. Ancillary Proceedings.

(a) Ancillary Receivership Abolished.

No ancillary receiver may be appointed in a bankruptcy case. Unless it is inconsistent with the order appointing him, a receiver appointed in a bankruptcy case has capacity to represent the bankrupt estate in any court.

(b) Reference of Ancillary Proceeding.

Any complaint, motion, or application for ancillary relief in a court of bankruptcy shall be referred by the clerk of the court in which it is filed to a referee of that court.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (*a*). In abolishing ancillary receiverships in bankruptcy, this rule adopts the practice for straight bankruptcy that has already been established for debtor relief proceedings. See MacLachlan, *Bankruptcy* 80 (1956). In recognizing the capacity of a receiver in bankruptcy to act outside the district of his appointment, it also conforms to the usual rule respecting the capacity of receivers appointed in United States courts. See Rule 17(b) of the Federal Rules of Cvil Procedure and 28 U.S.C. § 754, recognizing the capacity of any nonbankruptcy receiver appointed by a United States district court "to sue in any district without ancillary appointment." *Cf.* Rule 717. The second sentence of subdivision (a) is not intended, however, to declare a rule binding on the courts of a foreign jurisdiction.

Subdivision (*b*). The availability of nationwide service of process under Rule 704(f)(1) should substantially reduce the need for ancillary proceedings, and elimination of the necessity for the appointment of an ancillary receiver should simplify significantly the procedure when ancillary proceedings are necessary. The rule will supersede § 69c of the Act as well as General Order 51. *C4,* § 2a (20) of the Act. The provision for automatic reference of any complaint, motion, or application for ancillary relief consists with provisions for automatic reference of cases and adversary proceedings transferred pursuant to Rules 116(d) and 782 respectively. *Cf.* Rule 515.

Subdivision (b) has no application to complaints commencing plenary actions in the United States district courts by or against trustees and receivers. See 1 Collier ¶ 2.74 (1968).

Rule 218. Duty of Trustee to Keep Records, Make Reports, and Furnish Information.

A trustee shall: (1) within a reasonable time after entering upon his duties file a complete inventory of the property of the bankrupt unless such an inventory has already been filed or unless the court otherwise directs; (2) keep a record of receipts and the disposition of money and property received; (3) furnish information concerning the estate and its administration when reasonably requested by a party in interest, except as otherwise directed by the court; (4) make a written report to the court of the financial condition of the estate and the progress of its administration within a month after his qualification and every 3 months thereafter, unless the court by local rule or order otherwise directs; and (5) file a final report and account containing a detailed statement of receipts and disbursements. If a final meeting of creditors is ordered, the final report and account of the trustee shall be filed at least 15 days before the meeting.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule combines provisions from General Order 17 and §§ 47a and 49 of the Act into a catalogue of duties of a trustee in respect to record-keeping, making reports, and providing information concerning the estate he is administering. Clause (1) of the rule is substantially a restatement of General Order 17(1) but gives the trustee a reasonable time for filing a complete inventory of the bankrupt's property. Clauses (2), (3), (4), and (5) are derived from clauses (5), (10), (12), and (13) of § 47a of the Act. The duty to report to the court the exemptions to which the bankrupt is entitled, heretofore prescribed by § 47a(6) of the Act and General Order 17(2), is set forth in Rule 503(b).

The trustee's duty to furnish information is limited to that of responding to reasonable requests and is subject to the court's authority to enter protective orders under Rules 726 and 918. Thus a party to litigation against the trustee may be required to make the kind of showing specified in Rule 26(b)(3) of the Federal Rules of Civil Procedure in order to obtain discovery of documents and tangible things prepared by or for the trustee in anticipation of litigation or for trial. The trustee may also be entitled to one of the kinds of protective orders set out in Rule 26(c) of the Federal Rules of Civil Procedure or in Rule 918 of these rules. Criminal sanctions are imposed by 18 U.S.C. § 154 for a knowing refusal by a trustee or other bankruptcy officer "to permit a reasonable opportunity for the inspection of the documents and accounts relating to the affairs of estates in his charge by parties in interest when directed by the court to do so." See 2 Collier ¶ 29.13 (1961). The trustee's duty of providing information under this rule may be adequately performed when he makes available to a party in interest the books and records containing the information sought. *In re Berneddy's, Inc.*, 108 F.Supp. 183, 185 (D.Mass. 1952), aff'd sub nom. *Massachusetts v. Widett,* 204 F.2d 512 (1st Cir. 1953). The provision in § 49 of the Act for accessibility of the accounts and papers of the trustee and receiver is covered by clause (3) of this rule and by Rule 201(i), which require receivers generally to perform the duties prescribed by Rule 218. See also Rules 508 and 510.

The rule follows the statute in requiring the first financial report to be made by the trustee within the first month after his qualification but prescribes quarterly rather than bimonthly reports thereafter in the interest of reducing requests for extension and paperwork not necessary in the typical case. The rule recognizes that the court may, by a local rule generally applicable or an order entered in a particular case, require more frequent reports. The last sentence of the rule is correlated with Rule 204 (c), which requires a final meeting to be held only when the net proceeds realized exceed a prescribed amount. Official Form No. 30 is prescribed for use by the trustee in a no-asset case.

The provisions in General Order 17(3) for a procedure to be followed when a trustee fails to perform his duty to file a report or statement and in General Order 17(4) for reference of all accounts of trustees and receivers to the referee for audit are eliminated as unnecessary. See Rule 221(a) in regard to proceedings to remove a trustee and Rules 203(a)(6), 204(c), and 514 in regard to passing on the final account. See also Official Forms No. 29 and No. 30.

Rule 219. Compensation for Services Rendered and Reimbursement of Expenses Incurred in a Bankruptcy Case.

(a) Application for Compensation or Reimbursement.

A person seeking compensation for services, or reinbursement of necessary expenses, from the estate shall file with the court an application setting forth a detailed statement of (1) the services rendered and expenses incurred, and (2) the amounts requested. An application for compensation shall include a statement by the applicant as to what payments have theretofore been made or promised to him for services rendered or to be rendered in any capacity whatsoever in connection with the case, the source of the compensation so paid or promised, whether any compensation he has previously received has been shared and whether an agreement or understanding exists between the applicant and any other person for the sharing of compensation received or to be received for services rendered in or in connection with the case, and the particulars of any such sharing of compensation or agreement or understanding therefor, except that the details of any agreement by the applicant for the sharing of his compensation as a member or regular associate of a firm of lawyers or accountants shall not be required. The requirements of this subdivision shall apply to an application for compensation for services rendered by an attorney or accountant even though the application is filed by a creditor or other person on his behalf.

(b) Disclosure of Compensation Paid or Promised to Attorney for Bankrupt.

Every attorney for a bankrupt, whether or not he applies for compensation, shall file with the court on or before the first date set for the first meeting of creditors, or at such other time as the court may direct, a statement setting forth the compensation paid or promised him for the services rendered or to be rendered in connection with the case, the source of the compensation so paid or promised, and whether the attorney has shared or agreed to share such compensation with any other person. The statement shall include the particulars of any such sharing or agreement to share by the attorney, but the details of any agreement for the sharing of his compensation with a member or regular associate of his law firm shall not be required.

(c) Factors in Allowing Compensation.

(1) *General.* The compensation allowable by the court to a trustee, receiver, marshal, attorney, accountant, or other person entitled to compensation for services rendered in the administration of a bankrupt estate shall be reasonable, and in making allowances the court shall give due consideration to the nature, extent, and value of the services rendered as well as to the conservation of the estate and the interests of creditors.

(2) *Trustee, Receiver, or Marshal.* The compensation allowed by the Act to a trustee, receiver, or marshal shall be in full compensation for the services performed by him as required by the Act and by these rules, but shall not be deemed to cover expenses necessarily incurred in the performance of his duties and allowed upon the settlement of his accounts. Additional compensation may be allowed for legal or other services not required by him by the Act or by these rules, but only if such services were authorized by order of the court before they were rendered.

(3) *Attorney or Accountant.* Compensation may be allowed an attorney or an accountant only for professional services.

(d) Restriction on Sharing of Compensation.

Except as herein provided, a person rendering services in a bankruptcy case or in connection with such a case shall not in any form or guise share or agree to share the compensation paid or allowed him from the estate for such services with any other person, nor shall he share or agree to share in the compensation of any other person rendering services in a case under the Act or in connection with such a case. This rule does not prohibit an attorney or accountant from sharing his compensation as trustee, receiver, attorney, or accountant with a member or regular associate of his firm, or from sharing in the compensation received by his firm or by any other member or regular associate thereof, and does not prohibit an attorney for a bankrupt or for a petitioning creditor from sharing his compensation for services rendered with any other attorney contributing thereto. If a person violates this subdivision, the court may deny him compensation, may hold invalid any transaction subject to examination under Rule 220 to which he is a party, or may enter such other order as may be appropriate.

NOTES OF ADVISORY COMMITTEE ON RULES

Authority for the allowance and payment of compensation and reimbursement of expenses to officers, except referees, and employees out of an estate undergoing administration in bankruptcy is found in §§ 48a–c, 52b, 62a(1), and 64a(1) of the Act. This rule prescribes the procedure for making application for compensation and reimbursement of necessary expenses of trustees, receivers, marshals, attorneys, and accountants and provides guides for the court in making allowances. The rule is derived from subdivisions b, c, and d of § 62 and the first paragraph of § 72 of the Act, the last sentence of 11 U.S.C. § 76a, and General Orders 35(3) and 42. All of the provisions cited in the preceding sentence are superseded by these rules.

The premise for including in these rule provisions governing the allowance of compensation to officers, attorneys, and accountants is that it is peculiarly a judicial responsibility to supervise the administration of estates and in particular to assure that allowances for compensation to those rendering services in connection therewith are fair but not excessive. 3A Collier ¶ 62.05 [3] (1961). The costs of bankruptcy administration have been a matter of continuing concern in the history of American bankruptcy law. *Id.* ¶ 62.02. This concern has led to an increasing recognition of the necessity for close judicial control of these costs. The General Orders have contained numerous provisions regulating compensation of officers, attorneys, and accountants in bankruptcy cases. See particularly General Orders 35(1)–(3), 40, 42, 43, 44, and 45. See also 3A Collier, *supra* ¶ 62.02[4].

Applications for compensation. This rule assimilates the practice in respect to applications for and allowance of compensation to accountants to that which has developed under § 62 of the Act in respect to applications for and allowance of compensation to attorneys. This treatment is a corollary of the conformation by Rule 215 of the procedure for employing accountants to that prescribed for employing attorneys. All allowances of compensation under this rule are exercises of the court's discretion, but inasmuch as allowances to attorneys and accounts are not subject to the limitations imposed by § 48 of the Act on the compensation of receivers, marshals, and trustees, there is special need for detail in applications for compensation of attorneys and accountants. Such applications should indicate all relevant information having a bearing on the compensation to be allowed. See *Report of the Proceedings of the Judicial Conference of the United States*, March 30–31, 1967, p. 34.

The disclosure requirements of § 62d of the Act have been extended by subdivision (a) to cover all payments for services in connection with the case, whether or not made pursuant to previous allowances, and the source of such payments. Requiring such disclosures will strengthen the court's hand in dealing with the evils of fee-splitting and in discovering arrangements and relationships which may exert an adverse influence on administration of the estate. Consistently with the recognition in subdivision (d) of the propriety of the sharing of professional compensation by the members and regular associates of a firm, an applicant for an allowance of compensation is excused from disclosing the details of the partnership agreement or other arrangement for the distribution of compensation among members and regular associates of a firm of lawyers or accountants. The provisions of the rule regarding the sharing of professional compensation continue the policy of the Act as expressed in the proviso to § 62c but extend it to regular associates as well as members of a law partnership, to members and regular associates of an accounting partnership, and to the professional members and regular associates of an incorporated firm of attorneys or accountants. The last sentence of subdivision (a) makes it clear that the disclosures required to be made by an attorney or an accountant when he applies for an allowance of compensation are equally necessary when local practice permits a creditor or any other person to apply for reimbursement of expenses incurred for professional services. See 3A Collier ¶ 62.29[1] (1961).

Disclosure by bankrupt's attorney. Subdivision (b) of this rule is new and facilitates examination pursuant to Rule 220 of payments and arrangements for payment of his attorney by the bankrupt. Rule 220(a) authorizes the court to examine transactions whereby the debtor directly or indirectly pays money or transfers property to his attorney for services, and the disclosure required by subdivision (b) covers divisions of compensation and agreements therefor, however received and whatever its source, so long as the compensation is for services rendered in contemplation of or in connection with the bankruptcy case. Such disclosure is a safeguard against roundabout depletions of the estate and impositions on the bankrupt contrary to the purpose underlying Rule 220.

Factors in allowing compensation. The measure of compensation to receivers, marshals, and trustees in bankruptcy is governed by subdivisions a–c of § 48 of the Act and by subdivisions (c) and (d) of this rule. In respect to an attorney's compensation, it has been said that

"The principal factors which enter into a determination of what is reasonable are the time spent, the intricacy of the questions involved, the size of the estate the opposition encountered, the results obtained and the 'economic spirit' of the Bankruptcy Act to curtail unnecessary expenses." *In re Paramount Merrick, Inc.*, 252 F.2d 482, 485 (2d Cir. 1958).

The requirement of § 48d of the Act that the court apportion compensation of officers under certain circumstances is omitted from the rules as unnecessary. The abolition of ancillary receiverships by Rule 217(a) and of multiple trustees by Rule 209 eliminates many of the occasions for apportionment. When different persons serve as receiver and trustee or when more than one person serve as successive receivers or successive trustees, the guides embodied in paragraph (1) of subdivision (c) govern. The number of officers required to complete the administration of an estate should not be a factor augmenting its costs.

Paragraphs (2) and (3) of subdivision (c) of this rule require the court when making allowances to distinguish professional legal and accounting services from other kinds of services, including those required of a trustee, receiver, or marshal. A trustee or receiver may be authorized pursuant to Rule 215(e) to perform professional services for the estate when such an authorization is in the best interest of the estate. The words, "as required by the Act," have been inserted in the first sentence of paragraph (2) of subdivision (c) of this rule (as they were inserted in § 72 of the Act) as a qualification of the word "services" to make it clear that the limitations on compensation allowable to officers do not prevent the allowance of compensation for services rendered beyond those required of them by the Act and by the rules. See *Matter of Balsa Wood Co., Inc.*, 46 Am.B.R. (n.s.) 661 (S.D.N.Y. 1940). The last sentence of paragraph (2) makes clear the impropriety of any additional allowance for such services, however, unless they were authorized by the court in advance of their performance. Rule 215(e) permits such an authorization only if it is in the best interest of the estate.

Paragraph (3) of subdivision (c) is an extension of the rule of General Order 42, which has been viewed as an implementation of the first sentence of § 72 of the Act. See *In re Mabson Lumber Co.*, 394 F.2d 23, 24 (2d Cir. 1968); 3A Collier ¶ 62.09[2] (1961). The fees authorized by § 64a(1) of the Act to be paid to attorneys for bankrupts and for petitioning creditors as an administrative expense are likewise limited to compensation for "the professional services actually rendered." See *In re Lane Lumber Co.*, 30 Am.B.R. 749, 753–55 (D. Idaho 1913), affd, 213 Fed. 587, 590 (9th Cir. 1940); *In re Sage*, 225 Fed. 397, 398 (S.D. Iowa 1915); *cf. In re Charles Ray Glass, Inc.*, 47 F.Supp. 428, 430 (S.D. Cal. 1942) (requiring refund by bankrupt's attorney under § 60d of the Act).

Sharing of Compensation. The sharing of compensation allowed to an attorney with a forwarding attorney, heretofore permitted under § 62c of the Act, is no longer authorized unless the attorney sharing in the compensation has contributed to the services for which the compensation is allowed. This change in the law harmonizes the practice in respect to the sharing of fees with Canon 34 of the Canons of Professional Ethics and Disciplinary Rule 2–107 of the Code of Professional Responsibility adopted by the American Bar Association. See Drinker, *Legal Ethics* 186–88 (1953); Smith, *Canon 2: "A Lawyer Should Assist the Legal Profession in Fulfilling its Duty to Make Legal Counsel Available,"* 48 Tex.L.Rev. 285, 297 (1970). The rule prohibits division of compensation paid or agreed to be paid before bankruptcy as well as afterward. As Chief Justice Taft pointed out in *Weil v. Neary*, 278 U.S. 160, 173 (1929), arrangements for division of compensation are contrary to public policy not only because of "actual evil results but their tendency to evil in other cases."

"Any division of fees or other compensation represents, above all, an incentive for the applicant to claim a compensation high enough to make his own share in it a worthwhile remuneration. It thereby tends toward extravagance of expenditure. Another evil is that it subjects the officer or attorney entitled to compensation to outside influences, over which the court has no control and which may affect the administration by depriving the court's functionaries of their requisite independence of judgment. Finally, it results in a clear transfer of judicial power over expenditure and allowances from the court to persons who, at best, have a distinctly lesser degree of public responsibilities." 3A Collier 1637 (1961).

The second sentence of subdivision (d) resolves a doubt existing under § 62c of the Act as to whether an attorney or accountant may share compensation allowed him as trustee or receiver with a member or regular associate of a professional firm to which he belongs. See *In re Ira Haupt & Co.*, 361 F.2d 164, 167–68 (2d Cir. 1966), and *In re Street Railways Advertising Co.*, 54 F.Supp. 577, 578 (S.D.N.Y. 1940); compare 3A Collier, *supra* 1639.

Neither denial of compensation nor invalidation of an arrangement for compensation pursuant to subdivision (d) of this rule is an exclusive sanction for violation of the subdivision. A person may be removed from office or dismissed from his employment for such a violation. 3A Collier, *supra* 1639 n. 8. The provision in § 48e of the Act authorizing all compensation to be withhold from any receiver, trustee, attorney, or other person ousted from his position because of unlawful sharing of compensation is omitted from the rule because it only partially covers the grounds for withholding compensation and is unnecessary. See 2 Collier ¶ 48.11 (1962); 3A *id.* ¶ 62.29[4] (1961). General Order 43, authorizing denial of any allowance to an attorney for petitioning creditors, is omitted from the rules for like reasons. See 3A Collier, *supra* ¶ 62.29[4].

Rule 220. Examination of Bankrupt's Transactions with His Attorney.

(a) Payment or Transfer to Attorney in Contemplation of Bankruptcy.

On motion by any party in interest or on the court's own initiative, the court may examine any payment of money or any transfer of property by the bankrupt, made directly or indirectly and in contemplation of the filing of a petition by or against him, to an attorney for services rendered or to be rendered.

(b) Payment or Transfer to Attorney, or Agreement Therefor, After Bankruptcy.

On motion by the bankrupt or on the court's own initiative, the court may examine any payment of money or any transfer of property, or any agreement therefor, by the bankrupt to an attorney after bankruptcy, whether the payment or transfer is made or is to be made directly or indirectly, if the payment, transfer, or agreement therefor is for services in any way related to the bankruptcy.

(c) Invalidation of Unreasonable Payment, Transfer, or Obligation.

Any payment, transfer, or obligation examined under subdivision (a) or (b) of this rule shall be held valid only to the extent of a reasonable amount as determined by the court. The amount of any excess found to have been paid or transferred under subdivision (a) or (b) may be recovered for the benefit of the estate or the bankrupt, as their interests may appear, and any obligation found to be excessive may be cancelled to the extent of the excess.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is derived from § 60d of the Act. The rationale for the exercise of the rule-making power in this area is stated in the second paragraph of the Note to Rule 219. Information required to be disclosed by the attorney for a bankrupt by Rule 219(b) and by the bankrupt in his Statement of Affairs (Item #15 of Form No. 7, Item #20 of Form No. 8) will assist the court in determining whether to proceed under this rule. Section 60d was enacted in recognition of "temptation of a failing debtor to deal too liberally with his property in employing counsel to protect him in view of financial reverses and probable failure." *In re Wood & Henderson,* 210 U.S. 246, 253 (1908). This rule, like § 60d of the Act, is premised on the need for and appropriateness of judicial scrutiny of arrangements between a bankrupt and his attorney to protect the creditors of the estate and the bankrupt against overreaching by an officer of the court who is in a peculiarly advantageous position to impose on both the creditors and his client. 3 Collier 1141, 1153 (1964); MacLachlan, *Bankruptcy* 318 (1956). Rule 914 applies to any contested matter arising under this rule.

Rule 221. Removal of Trustee or Receiver; Substitution of Successor.

(a) Removal for Cause.

On application of any party in interest or on the court's own initiative and after hearing on notice, the court may remove a trustee or receiver for cause and appoint a successor.

(b) Substitution of Successor.

When a trustee or receiver dies, resigns, is removed, or otherwise ceases to hold office during the pendency of a bankruptcy case, his successor is automatically substituted as a party in any pending action, proceeding, or matter without abatement.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (a) of this rule is derived from § 2a(17) of the Act. It may be appropriate in a proceeding under this subdivision, especially one initiated by the court, to appoint a receiver under Rule 201(a) to represent the estate for the limited purposes of the proceeding.

Subdivision (b) is an elaboration of § 46 of the Act. *Cf.* § 1(22) of the Act. The references in § 46 to a "joint receiver" and "joint trustee" are omitted from this rule by virtue of the fact that no more than one trustee at a time is authorized to be elected or appointed under Rule 209. Rule 725, which governs the substitution of parties in adversary proceedings, is correlated with this rule.

PART III.—CLAIMS AND DISTRIBUTION TO CREDITORS

Rule 301. Proof of Claim.

(a) Form and Content; Who May Execute.

A proof of claim shall consist of a statement in writing setting forth a creditor's claim and, except as provided in Rules 303 and 304, shall be executed by the creditor or by his authorized agent. A proof of claim for wages, salary, or commissions shall conform substantially to Official Form No. 16 or No. 16A; any other proof of claim shall conform substantially to Official Form No. 15.

(b) Evidentiary Effect.

A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is an adaptation of § 57a of the Act. The Federal Rules of Evidence, made applicable to bankruptcy cases by Rule 917, do not prescribe the evidentiary effect to be accorded particular documents. As indicated in the Note accompanying Rule 917, subdivision (b) of this rule supplements the Federal Rules of Evidence as they apply to bankruptcy cases.

Rule 302. Filing Proof of Claim.

(a) Manner of Filing.

In order for his claim to be allowed, every creditor, including the United States, any state, or any subdivision thereof, must file a proof of claim in accordance with this rule, except as provided in Rules 303 and 304.

(b) Place of Filing.

A proof of claim shall be filed in the place prescribed by Rule 509.

(c) Claim Founded on a Writing.

When a claim, or an interest in property of the bankrupt securing the claim, is founded on a writing, the original or a duplicate shall be filed with the proof of claim unless the writing has been lost or destroyed. If lost or destroyed, a statement of the circumstances of the loss or destruction shall be filed with the claim. If a security interest in property of the bankrupt is claimed, the proof of claim shall be accompanied by satisfactory evidence that the security interest has been perfected.

(d) Transferred Claim.

(1) *Unconditional Transfer Before Proof Filed.* If a claim has been unconditionally transferred before proof of the claim has been filed, the proof of such claim may be filed only by the transferee. If such claim has been transferred after the filing of the petition, it shall be supported by (A) a statement of the transferor acknowledging thetransfer and stating the consideration therefor or (B) a statement of the transferee why it is impossible to obtain such a statement from the transferor.

(2) *Unconditional Transfer After Proof Filed.* If a claim has been unconditionally transferred after proof thereof has been filed, proof of the terms of the transfer shall be filed, and the court shall immediately notify the original claimant by mail of the filing of such proof of transfer and that objection thereto, if any, must be made within 10 days of the mailing of the notice or within such further time as the court may allow. If the court finds, after hearing if necessary, that the claim has been unconditionally transferred, it shall make an order substituting the transferee for the original claimant. If it does not so find, the court shall make such order as may be appropriate.

(3) *Transfer of Claim for Security Before Proof Filed.* If a claim has been transferred for security before proof of the claim has been filed, the transferor or transferee or both may file a proof of claim for the full amount. The proof shall be supported by a statement setting forth the terms of the transfer and, if the claim was so transferred after the filing of the petition, by (A) a statement of the transferor acknowledging the transfer and stating the consideration therefor, or (B) a statement of the transferee why it is impossible to obtain such a statement from the transferor. If either the transferor or the transferee files a proof of claim, the court shall immediately notify the other by mail that he may join

in the claim so filed. If both transferor and transferee file proofs of the same claim, the proofs shall be consolidated. After hearing if necessary, the court shall make such orders respecting allowance and voting of the claim, payment of dividends thereon, and participation in the administration of the estate as may be appropriate.

(4) *Transfer of Claim for Security After Proof Filed.* If a claim has been transferred for security after proof thereof has been filed, proof of the terms of the transfer shall be filed, and the court shall immediately notify the original claimant by mail of the filing of such proof of transfer and that objection thereto, if any, must be made within 10 days of the mailing of the notice or within such further time as the court may allow. After hearing if necessary, the court shall make such orders respecting allowance and voting of the claim, payment of dividends thereon, and participation in the administration of the estate as may be appropriate.

(e) Time for Filing.

A claim must be filed within 6 months after the first date set for the first meeting of creditors, except as follows:

(1) On application before the expiration of such period and for cause shown, the court may grant a reasonable, fixed extension of time for filing of a claim by the United States, a state, or a subdivision thereof.

(2) In the interest of justice the court may grant an infant or incompetent person without a guardian up to an additional 6 months for filing a claim.

(3) A claim which arises in favor of a person or becomes allowable because of a judgment for the recovery of money or property from such person or because of a judgment denying or avoiding a person's interest in property may be filed within 30 days after such judgment becomes final, but if the judgment imposes a liability which is not satisfied, or a duty which is not performed, within such period or such further time as the court may permit, the claim shall not be allowed.

(4) If notice of no dividend was given to creditors pursuant to Rule 203(b), and subsequently the payment of a dividend appears possible, the court shall notify the creditors of that fact and shall grant them a reasonable, fixed time for filing their claims of not less than 60 days after the mailing of the notice or 6 months after the first date set for the first meeting of creditors, whichever is the later.

(5) If all claims allowed have been paid in full, the court may grant a reasonable, fixed extension of time for the filing of claims not filed within the time hereinabove prescribed against any remaining surplus.

Notes of Advisory Committee on Rules

Subdivision (a) of this rule is substantially a restatement of the general requirement that claims be proved and filed as set out in the first sentence of § 57n of the Act. The exceptions refer to a new rule authorizing certain claims to be filed by the bankrupt and to a revised provision for the filing of a claim by a contingent creditor of the bankrupt.

Subdivision (b) and Rule 509, to which the subdivision refers, are adapted from § 57c of the Act.

Subdivision (c). The first two sentences of subdivision (c) are derived from § 57b of the Act and the fifth sentence of General Order 21 (1), but add a requirement for the filing of any written security agreement and provide that the filing of a duplicate of a writing underlying a claim authenticates the claim with the same effect as the filing of the original writing. *Cf.* Rules 1001 (4) and 1003 of the Federal Rules of Evidence. The statutory requirement of an oath is dispensed with in accordance with the policy of the rules to simplify procedures and reduce costs. *Cf.* Rule 911(b) and Rule 11 of the Federal Rules of Civil Procedure. The provision of § 57b of the Act allowing withdrawal of an instrument on permission of the court is deleted as unnecessary in view of the authorization given by the rule to the filing of a duplicate in lieu of the original. The last sentence of subdivision (c) is new and, with the requirement in the first sentence for the filing of any written security agreement, is designed to facilitate the determination whether the claim is secured and properly perfected so as to be valid against the trustee. "Satisfactory evidence" of perfection, which is to accompany the proof of claim, would include a duplicate of an instrument filed or recorded, a duplicate of a certificate of title when a security interest is perfected by notation on such a certificate, a statement that pledged property has been in the possession of the secured party since a specified date, or a statement of the reasons why no action was necessary for perfection. The secured creditor is not required to file a proof of claim under this rule if he is not seeking the allowance of a claim for a deficiency. See Rule 306(d).

Subdivision (d) is an elaboration of General Order 21 (3). The rule recognizes the differences between an unconditional transfer of a claim and a transfer for the purpose of security and prescribes a procedure for dealing with the rights of the transferor and transferee when the transfer is for security. The rule clarifies the procedure to be followed when a transfer precedes the filing of the petition as well as that required when the transfer occurs afterward. When a claim is assigned after bankruptcy but before a proof of the claim is filed, General Order 21(3) has required the proof to be accompanied by an affidavit of the assignor who owned the claim at the date of bankruptcy. The affidavit duplicates in considerable part the information required to be included in the proof of claim. The interests of sound administration are adequately served by requiring the post-bankruptcy transferee to file with his proof of claim a statement of the transferor acknowledging the transfer and the consideration for the transfer. Such a disclosure will assist the court in dealing with evils that may arise out of post-bankruptcy traffic in claims against a bankrupt estate. *Monroe* v. *Scofield*, 135 F.2d 725 (10th Cir. 1943) *In re Philadelphia & Western Ry.*, 64 F. Supp. 738 (E.D.Pa. 1946); *cf. In re Latham Lithographic Corp.*, 107 F.2d 749 (2d Cir. 1939). Both paragraphs (1) and (3) of this subdivision, which deal with a transfer before the filing of a proof of claim, recognize that it may be impossible to obtain the required statement from the transferor, but in that event the reason for the impossibility must accompany the proof of claim filed by the transferee.

Paragraphs (3) and (4), which are new, clarify the doubtful status of a claim transferred for the purpose of security. An assignee for security has been recognized as a rightful claimant in bankruptcy. *Feder* v. *John Engelhorn & Sons*, 202 F.2d 411 (2d Cir. 1953). An assignor's right to file a claim notwithstanding the assignment was sustained in *In re R & L Engineering Co.*, 182 F. Supp. 317 (S.D.Cal. 1960). Apparently neither the assignor nor the assignee was accorded the right to file a claim assigned for security in *In re Eagles*, 99 Fed. 695 (E.D. N.C. 1900), but the facts of the case are obscure. Facilitation of the filing of proof by both claimants as holders of interests in a single claim is consonant with equitable treatment of the parties and sound bankruptcy administration. See *In re Latham Lithographic Corp.*, 107 F.2d 749 (2d Cir. 1939).

Paragraphs (2) and (4) of subdivision (d) deal with the transfer of a claim after proof thereof has been filed and are an adaptation of the second sentence of General Order 21(3). The proof of the terms of the transfer required to be disclosed to the court will facilitate the court's determination of the appropriate order to be entered on account of the transfer. The requirement of General Order 21(5) that assignments of claims after proof has been filed be "proved or acknowledged" before an officer enumerated in § 20 of the Act has been deleted as needless.

Subdivision (*e*) is adapted from § 57n of the Act and retains the time limits on the filing of claims established by the statutory provisions. Although the claim of a secured creditor against the bankrupt may have arisen before bankruptcy, a judgment avoiding his security may make his claim allowable for the first time after the time for filing claims generally has expired. In according the creditor in such a case a right to file his claim 30 days after the judgment against him becomes final, clause (3) of the subdivision clarifies the applicability of this exception from the 6-month limitation to a situation entirely within the ambit of the purpose of the third proviso of § 57n, from which the clause is derived. A judgment does not become final for the purpose of starting the 30-day period provided for by clause (3) until the time for appeal has expired or, if an appeal is taken, until the appeal has been disposed of. *In re Tapp*, 61 F.Supp. 594 (W.D.Ky. 1945).

Clause (4) of subdivision (e) is new and is correlated with the provision in Rule 203(b) authorizing notification to creditors of estates from which no dividends are to be anticipated. The new clause permits creditors who have refrained from filing claims after receiving such a notification to be given an additional opportunity to file when subsequent developments during the administration indicate the possibility of a dividend. The notice required by this clause must be given in the manner provided in Rule 203.

Provision is made in Rule 203 (a) and (d) for notifying all creditors of the fixing of a time for filing claims against a surplus under clause (5). This clause, which is derived from the last sentence of § 57n of the Act, does not deal with the distribution of the surplus. See also Rule 122(9).

Rule 303. Filing of Tax and Wage Claims by Bankrupt.

If a creditor having a provable claim for taxes or wages fails to file his claim on or before the first date set for the first meeting of creditors, the bankrupt may execute and file a proof of such claim in the name of the creditor. Such claim shall be treated as a filed claim only for purposes of allowance and distribution. The court shall forthwith mail notice of such filing to the creditor and to the trustee. The creditor may nonetheless file a proof of claim pursuant to Rule 302 which proof when filed shall supersede the proof filed by the bankrupt.

Notes of Advisory Committee on Rules

It is the policy of the Act that debtors' estates should be administered for the benefit of creditors without respect to the dischargeability of their claims. After their estates have been closed, however, discharged bankrupts may find themselves saddled with liabilities, particularly for taxes, which remain unpaid because of the failure of creditors holding nondischargeable claims to file proofs of claim and receive distributions thereon. The result is that the bankrupt is deprived of an important benefit of the Act without any fault or omission on his part and without any objective of the Act being served thereby.

This rule authorizes a bankrupt to file a proof of claim for any holder of a provable tax or wage claim. Although tax claims are not expressly included in the list of provable claims set out in § 63a of the Act, the provability of those that are due and owing at the time of bankruptcy has never been doubted. See 3 Collier ¶ 57.30 (1964); 3A *id.* ¶ 63.26 (1961). Not all tax and wage claims are nondischargeable, but it may be particularly difficult to determine whether tax claims survive discharge. See Plumb, *Federal Tax Liens and Priorities in Bankruptcy*, 43 Ref.J. 37, 43–44 (1969); 1 Collier ¶ 17.14 (1967). In order to eliminate the necessity of his resolution of this troublesome issue, the option extended the bankrupt by this rule does not depend on nondischargeability. No serious administrative problems and no unfairness to creditors are foreseen as likely to develop from adoption of this rule. The bankrupt's authority to file is conditioned on the creditor's failure to file his own proof of claim on or before the first date set for the first meeting of creditors, which is the date a claim must ordinarily be filed in order to be voted. Notice to the creditor is provided to enable him to file a proof of claim pursuant to Rule 302, which proof, when filed, would supersede the proof filed by the bankrupt. Notice to the trustee, if one has been elected or appointed, would serve to alert the trustee to the special character of the proof and the possible need for supplementary evidence of the validity and amount of the claim. If the trustee does not qualify until after a proof of claim is filed by the bankrupt pursuant to this rule, he should be notified as soon as practicable thereafter.

This rule is not intended to subject the creditor in whose name a claim is filed thereunder to the jurisdiction of the court of bankruptcy. To the extent the claim is allowed and dividends paid on it, it will be reduced or perhaps paid in full. If the claim is also filed pursuant to Rule 304, only one distribution on it may be made. As required expressly by Rule 304 and by the purpose of this rule such distribution must diminish the claim.

Rule 304. Claim by Codebtor.

A person who is or may be liable with the bankrupt, or who has secured a creditor of the bankrupt, may, if the creditor fails to file his claim on or before the first date set for the first meeting of creditors, file a proof of claim pursuant to Rule 302 in the name of the creditor, if known, or, if unknown, in his own name. No distribution shall be made on the claim except on satisfactory proof that the original debt will be diminished by the amount of the distribution. The creditor may nonetheless file a proof of claim pursuant to Rule 302, and such proof of claim shall supersede the proof of claim filed pursuant to the first sentence of this rule.

Notes of Advisory Committee on Rules

This rule is derived from § 57i of the Act and General Order 21(4). The Act however, authorizes a filing procedure only by a person who has secured a creditor of the bankrupt by his "individual undertaking." The rule goes further by authorizing the same procedure to be followed when the person has secured a creditor of the estate by pledging collateral or otherwise creating a security interest in his own property, without assuming any personal obligation to the creditor. The rule also makes clear that anyone who may be liable on a debt of the bankrupt, including, surety, guarantor, indorser, or other codebtor, is authorized to file in the name of the creditor of the bankrupt. See 3 Collier ¶ 57.21 (1964); Countryman, *Cases and Materials on Debtor and Creditor* 686–89 (1964). The rule assures a fair opportunity to the surety or other contingent claimant to exercise the right of filing in the name of the creditor (or in his own name if that of the creditor is unknown) by recognizing that he should not be required to wait until the last minute before the expiration of the period allowed for the filing of claims. Since filing his claim on or before the first date set for the first meeting of creditors is ordinarily necessary in order for a creditor to participate in the election of the trustee and the other business conducted at the meeting, conditioning the right to file under this rule on the creditor's nonfiling on or before that date is a reasonable accommodation of the interests of the parties and administrative convenience.

Rule 305. Withdrawal of Claim.

A creditor may withdraw a claim as of right by filing a notice of withdrawal, except as provided in this rule. If, after a creditor has filed a claim, an objection is filed thereto or a complaint is filed against him in an adversary proceeding or the creditor participates significantly in the case or receives a dividend, he may not withdraw the claim save on application or motion, with notice to the trustee or receiver, and on order of the court containing such terms and conditions as the court deems proper.

NOTES OF ADVISORY COMMITTEE ON RULES

Since 1938 it has generally been held that Rule 41 of the Federal Rules of Civil Procedure governs the withdrawal of a proof of claim. *In re Empire Coal Sales Corp.*, 45 F. Supp. 974, 976 (S.D.N.Y.), aff'd sub nom. *Kleid* v. *Ruthbell Coal Co.*, 131 F. 2d 372, 373 (2d Cir. 1942); *Kelso* v. *Maclaren*, 122 F. 2d 867, 870 (8th Cir. 1941); *In re Hills*, 35 F. Supp. 532, 533 (W.D. Wash. 1940). Accordingly it was ruled in the cited cases that a proof of claim may be withdrawn only subject to approval by the court after an objection has been filed. This constitutes a restriction of the right of withdrawal as recognized by some though by no means all of the cases antedating the promulgation of the Federal Rules of Civil Procedure. See 3 Collier ¶ 57.12 (1961); Note, 20 Bost. U.L. Rev. 121 (1940).

The filing of a claim does not commence an adversary proceeding under these rules, but the filing of an objection to the claim initiates a contest that must be disposed of by the court. This rule recognizes the applicability of the considerations underlying Rule 41(a) of the Federal Rules of Civil Procedure to the withdrawal of a claim after it has been put in issue by an objection. Rule 41(a)(2) of the Federal Rules of Civil Procedure provides for a bar to dismissal over the objection of a defendant who has pleaded a counterclaim prior to the service of the plaintiff's motion to dismiss. Although the applicability of this provision to the withdrawal of a claim was assumed in *Conway* v. *Union Bank of Switzerland*, 204 F. 2d 603, 608 (2d Cir. 1953), *Kleid* v. *Ruthbell Coal Co., supra*, *Kelso* v. *Maclaren, supra*, and *In re Hills, supra*, this rule vests discretion in the court to grant, deny, or condition the request of a creditor to withdraw, without regard to whether the trustee has filed a merely defensive objection or a complaint seeking an affirmative recovery of money or property from the creditor.

A number of pre-1938 cases sustained denial of a creditor's request to withdraw his proof of claim on the ground that he had estopped himself or made an election of remedies. 2 Remington, *Bankruptcy* 186 (Henderson ed. 1956); *cf.* 3 Collier ¶ 57.12, at 201 (1964). Voting his claim in an election of a trustee was an important factor in the denial of a request to withdraw in *Standard Varnish Works* v. *Haydock*, 143 Fed. 318, 319–20 (6th Cir. 1906), and *In re Cann*, 47 F.2d 661, 662 (W.D.Pa. 1931). And it has frequently been recognized that a creditor should not be allowed to withdraw his claim once he has accepted a dividend. *In re Friedman*, 1 Am.B.R. 510, 512 (Ref., S.D.N.Y. 1899); 3 Collier 205 (1964); *cf. In re O'Gara Coal Co.*, 12 F.2d 426, 429 (7th Cir.), cert. denied, 271 U.S. 683 (1926). It was held in *Industrial Credit Co.* v. *Hazen*, 222 F.2d 225 (8th Cir. 1955), however, that although a claimant had participated in the first meeting of creditors and in the examination of witnesses, he was entitled under Rule 41(a)(1) of the Federal Rules of Civil Procedure to withdraw his claim as of right when he filed a notice of withdrawal before the trustee filed an objection under § 57g of the Act. While this rule incorporates the post-1938 case law referred to in the first paragraph of this note, it rejects the inference darwn in the *Hazen* case that Rule 41(a) of the Federal Rules of Civil Procedure supersedes the pre-1938 case law that vests discretion in the court to deny or restrict withdrawal of a claim by a creditor on the ground of estoppe or election of remedies. While purely formal or technical participation in a case by a creditor who has filed a claim should not deprive him of a right to withdraw his claim, a creditor who has accepted a dividend or who has voted in the election of a trustee or otherwise participated actively in proceedings in a case should be permitted to withdraw only with the approval of the court on terms deemed appropriate by it after notice to the trustee or receiver. 3 Collier 205–06 (1964).

Rule 306. Objections to and Allowance of Claims for Purpose of Distribution; Valuation of Security.

(a) Trustee's Duty to Examine and Object to Claims.

The trustee shall examine proofs of claim and object to the allowance of improper claims, unless no purpose would be served thereby.

(b) Allowance When No Objection Made.

Subject to the provisions of subdivision (d) of this rule, a claim filed in accordance with Rule 302, 303, or 304 shall be deemed allowed for the purpose of distribution unless objection is made by a party in interest.

(c) Objection to Allowance.

An objection to the allowance of a claim for the purpose of distribution shall be in writing. A copy of the objection and notice of a hearing thereon shall be mailed or delivered to the claimant. If an objection to a claim is joined with a demand for relief of the kind specified in Rule 701, the proceeding thereby becomes an adversary proceeding.

(d) Secured Claims.

If a secured creditor files a proof of claim, the value of the security interest held by him as collateral for his claim shall be determined by the court, and the claim shall be allowed only to the extent it is enforceable for any excess of the claim over such value.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (a) is derived from 47a(8) of the Act. The last clause recognizes that the trustee and the court should not be burdened by the making and consideration of objections to claims when the disposition of the objection can have no consequence in the administration of the estate.

Subdivision (b) relieves the court of the substantial burden of making formal orders of allowance of claims to which no objection is made. The automatic allowance effected by the rules is only for the purpose of distribution and does not constitute a determination as to the amount of validity of the claim for any other purpose.

Subdivision (c) prescribes the manner in which an objection to a claim for the purpose of distribution shall be made and notice of the hearing thereon given to the claimant. The requirement of a writing does not apply to an objection to the allowance of a claim for the purpose of voting. See Rule 207(a). The contested matter initiated by such an objection to a claim is governed by Rule 914, unless a counterclaim by the trustee is joined with the objection to the claim. The filing of a counterclaim ordinarily commences an adversary proceeding subject to the rules in Part VII. While the bankrupt's other creditors may make objections to the allowance of a claim, the demands of orderly and expeditious administration have led to a recognition that the right to object is generally centered in the trustee as provided in subdivision (a). 3 Collier ¶ 57.17[2.2] (1961). Section 57f of the Act, requiring objections to claims to be heard and determined as soon as the convenience of the court and the best interests of the estates and the claimants will permit, is omitted since these considerations govern all proceedings and matters in bankruptcy cases. See Rule 903.

By virtue of the automatic allowance a dividend may be paid on a claim which may thereafter be disallowed on objection made pursuant to subdivision (c). The amount of the dividend paid before the disallowance in such event would be recoverable by the trustee in an adversary proceeding brought pursuant to § 571 of the Act.

Subdivision (d) is a restatement of § 57h of the Act. The court may utilize any of the modes for determining the value of security specified in that subdivision or any other method it deems appropriate.

Rule 307. Reconsideration of Claims.

A party in interest may move for reconsideration of an order allowing or disallowing a claim against the estate. If the motion is granted, the court may after hearing on notice make such further order as may be appropriate.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is a substantial revision of § 57k of the Act and General Order 21(6). Because these provisions have spoken only of the reconsideration of claims that have been allowed, it has sometimes been held that a referee has no jurisdiction to reconsider a disallowed claim, or the amount or priority of an allowed claim, at the instance of the claimant himself. See, *e.g., In re Gouse*, 7 F. Supp. 106 (M.D.Pa. 1934); *In re Tomlinson & Dye, Inc.*, 3 F.Supp. 800 (N.D. Okla. 1933). This view disregarded § 2a(2) of the Act and the "ancient and elementary power" of a referee as a court to reconsider any of his orders. *In re Pottasch Bros. Co., Inc.*, 79 F.2d 613, 616 (2d Cir. 1935); *Castaner* v. *Mora*, 234 F.2d 710 (1st Cir. 1956). This rule recognizes the power of the court, including a referee, to reconsider an order of disallowance on appropriate motion.

Reconsideration of a claim that has been previously allowed or disallowed after objection is discretionary with the court. The right to seek reconsideration of an allowed claim, like the right to object to its allowance, should be recognized to rest in the trustee if one has qualified and is performing the duties of his office wtih reasonable diligence and fidelity. A request for reconsideration of a disallowance would, on the other hand, ordinarily come from the claimant, the only party likely to have a sufficient interest to make the motion.

A proof of claim executed and filed in accordance with the rules in this Part III is prima facie evidence of the validity and the amount of the claim notwithstanding a motion for reconsideration of an order of allowance. Failure to respond constitutes no admission, though it may be deemed a consent to a reconsideration. *In re Goble Boat Co.*, 190 Fed. 92 (N.D.N.Y. 1911). The court may decline to reconsider an order of allowance or disallowance without notice to any adverse party and without affording any hearing to the movant. If a motion to reconsider is granted, notice and hearing must be afforded to parties in interest before the previous action taken in respect to the claim may be vacated or modified. After reconsideration, the court may allow or disallow the claim, increase or decrease the amount of a prior allowance, accord the claim a priority different from that originally assigned it, or enter any other appropriate order.

The rule does not retain the limitation imposed by § 57k of the Act that apparently forecloses reconsideration after the case has been closed. Authorities have disagreed as to whether reconsideration may be had after a case has been reopened. Compare 3 Collier 364 (1964), with 2 Remington, *Bankruptcy* 498 (Henderson ed. 1956). If a case is reopened as provided in Rule 515, reconsideration of the allowance or disallowance of a claim may be sought and granted in accordance with this rule. With respect to a distribution previously made, the allowance of a claim on such reconsideration would have the effect prescribed by § 65c of the Act. On disallowance after reconsideration the trustee may recover dividends previously paid on the claim, as provided in § 57l of the Act.

Rule 308. Declaration and Payment of Dividends.

Dividends to creditors shall be paid as promptly as practicable in such amounts and at such times as the court may order. Dividend checks shall be made payable and mailed to each creditor whose claim has been allowed, unless a power of attorney authorizing another person to receive dividends has been executed and filed in accordance with Rule 910. In that event, unless a local rule or court order provides otherwise, dividend checks shall be made payable to the creditor and to such other person and shall be mailed to such other person.

NOTES OF ADVISORY COMMITTEE ON RULES

The first sentence of this rule consolidates and considerably simplifies provisions found in §§ 39a(5), 47a(11), and 65b of the Act. The preparation of records showing dividends declared and to whom payable is subject to prescription by the Director of the Administrative Office pursuant to Rule 504(a). The rule, like the statutory provisions from which it is derived, governs distributions to creditors having priority as well as to general unsecured creditors. See 3A Collier ¶ 65.02 (1964). Notwithstanding the detailed statutory provisions regulating the declaration of dividends, a necessarily wide discretion over this matter has been recognized to reside in the court. See 3A Collier, *supra* ¶ 65.03; I *Proceedings of Seminar for Newly Appointed Referees in Bankruptcy* 173 (1964). Although the rule leaves to the discretion of the court the amounts and the times of dividend payments, it recognizes the creditors' right to as prompt payment as practicable.

The second and third sentences of the rule make explicit the method of payment of dividends and afford protection of the interests of the creditor and the holder of a power of attorney authorized to receive payment.

Rule 309. Small Dividends.

The court may by local rule or order direct that no dividend for less than $1 shall be distributed by the trustee to any creditor. Any such dividend shall be treated in the same manner as unclaimed funds as provided in Rule 310.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule permits a court to eliminate the disproportionate expense and inconvenience incurred by the issuance of a dividend check of less than $1. Creditors are typically more irritated than pleased to receive such small dividends, but the money is held subject to their specific request as are unclaimed dividends under § 66 of the Act. At the same time the trustee makes payment of undistributed dividends to the clerk of the district court pursuant to a direction in accordance with this rule, he should file with the clerk a list of the names and addresses, so far as known, of the persons entitled to the money so paid in and the respective amounts payable to them.

Rule 310. Unclaimed Funds.

Sixty days after the distribution of the final dividend, the trustee shall stop payment of all checks then unpaid and file with the clerk of the district court a list of the names and addresses, so far as known, of the persons entitled to such payments and the amounts thereof. The unclaimed funds shall thereupon be deposited in the registry of the United States district court and shall be withdrawn as provided in Title 28, U.S.C. § 2042.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is derived from § 66 of the Act. The provision of the Act that the unclaimed money so deposited shall not be subject to escheat under the laws of any state is a rule of substantive law not appropriate for inclusion in the rule.

PART IV—THE BANKRUPT: DUTIES AND BENEFITS

Rule 401. Petition as Automatic Stay of Certain Actions on Unsecured Debts.

(a) Stay of Actions.

The filing of a petition shall operate as a stay of the commencement or continuation of any action against the bankrupt, or the enforcement of any judgment against him, if the action or judgment is founded on an unsecured provable debt other than one not dischargeable under clause (1), (5), (6), or (7) of § 17a of the Act.

(b) Duration of Stay.

Except as it may be deemed annulled under subdivision (c) or may be terminated, annulled, or modified by the bankruptcy court under subdivision (d) or (e) of this rule, the stay shall continue until the bankruptcy case is dismissed or the bankrupt is denied a discharge or waives or otherwise loses his right thereto.

(c) Annulment of Stay.

At the expiration of 30 days after the first date set for the first meeting of creditors, the stay provided by this rule shall be deemed annulled as against any creditor whose debt has not been duly scheduled and who has not filed his claim by that time.

(d) Relief from Stay.

On the filing of a complaint by a creditor seeking relief from a stay provided by this rule, the bankruptcy court shall set the trial for the earliest possible date, and it shall take precedence over all matters except older matters of the same character. The court may, for cause shown, terminate, annul, modify, or condition such stay.

(e) Availability of Other Relief.

Nothing in this rule precludes the issuance of, or relief from, any stay, restraining order, or injunction when otherwise authorized.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule supplements and reinforces the policy of §§ 11a, 14f(2), and 17c(4) of the Act. Section 11a provides in terms for a mandatory stay until adjudication or dismissal of the petition of all actions founded on dischargeable debts which are pending against the bankrupt when the petition is filed. This statutory provision has been further held to authorize stay of the enforcement by levy of execution or otherwise of a judgment on a dischargeable debt against the bankrupt. 1 Collier ¶ 11.03 (1960). As a matter of comity application for the stay has frequently been made heretofore to the court where the action is pending, but the Act and the case law do not recognize any discretion in the court to deny or condition the stay against creditors holding dischargeable debts, *Id* ¶¶ 11.05, 11.08.

By amendatory legislation in 1970, Congress substantially extended the protection of a bankrupt against actions by his creditors well beyond the limits of § 11a. Section 17c(4) now authorizes the bankruptcy court to enjoin any creditor from instituting or continuing an action on any debt, whether or not dischargeable and whether before or after adjudication. This provision is correlated with two other amendments of the Act protective of bankrupts: (1) Paragraphs (1) and (2) of § 17c provide for a determination of the issue of dischargeability of any debt by the bankruptcy court and for the determination of any issues remaining after it determines that any debt is nondischargeable; and (2) section 14f(2) requires that an order of discharge enjoin all creditors whose debts are discharged from thereafter instituting or continuing any action or employing any process to collect such debts as personal liabilities of the bankrupt.

Subdivision (a). This rule relieves the bankrupt from the necessity of filing an application for a stay or an injunction against the institution or continuation of any action on a dischargeable debt or of one not dischargeable under § 17a(2), (3), (4), or (8) of the Act. All creditors receive notice of the effect of the petition as a stay along with notice of the first meeting of creditors (see Official Form No. 12). The bankruptcy court may appropriately also give notice of the stay to the judge or other officer of a nonbankruptcy court in which an action subject to the stay is known to be pending, particularly when there appears to be a likelihood that action is disregard of the stay may occur. The stay provided by the rule protects the bankrupt and relieves other courts from pointless and needless litigation. The rule provides an expedited procedure in subdivision (d) for determining the propriety of granting relief from the stay where a special justification exists—*e.g.*, to allow an unliquidated claim to be determined by judgment in a pending action, as in *In re Gerstenzang*, 52 F. 2d 863, 864 (S.D.N.Y. 1931), or to enable the creditor to satisfy a condition to the enforcement of the claim against a surety, as in *Manufacturers' Finance Corp.* v. *Vye-Neill Co.*, 46 F. 2d 136 (D.Mass. 1930), aff'd. 62 F. 2d 625, 628 (1st Cir.), cert. denied, 289 U.S. 738 (1933).

The premise of the provision for staying actions and enforcement of judgments on debts excepted by clauses (2), (4), and (8) of § 17a of the Act from discharge is the same as that underlying § 17c(2) of the Act. As pointed out in Sen. Rep. No. 91–1173, 91st Cong., 2d Sess. 2, 4 (1970), bankrupts have been harassed by creditors who file actions against their debtors notwithstanding the bankruptcy, in the hope and expectation that default judgments will be entered. Section 17c of the Act undertakes to correct this abuse while recognizing the rights of creditors to prompt adjudication of their rights by conferring jurisdiction on the bankruptcy court to determine the dischargeability of any debt under § 17a of the Act. The jurisdiction of the bankruptcy court to make this determination is exclusive with respect to debts alleged to come within clauses (2) and (4) of § 17a and, subject to a limited exception, within clause (8) of § 17a of the Act. The abuse intended to be dealt with by Congress arose in large part as a result of creditors' actions and efforts to enforce judgments on debts alleged in postbankruptcy complaints to be non-dischargeable under § 17a(2). Indeed, dischargeability under this clause typically depends on the resolution of questions of fact that conceivably could be raised in almost any action or in respect to almost any judgment on a contract claim against the bankrupt. *Cf. Hisey* v. *Lewis-Gale Hospital, Inc.*, 27 F.Supp. 20, 27 (WD. Va. 1939). A stay of the creditors from proceeding outside of the bankruptcy court on debts alleged to come within § 17a(2), (4), and (8) protects the bankrupt from harassment and frustration of the benefits intended to be assured by the enactment of § 17c(2). A creditor who contends that his debt to not discharged under § 17a(8) is not subject to the filing requirement of § 17c(2) if there is a right to jury trial and a jury trial has been or will be demanded. Since the special situation contemplated by this reference to a jury trial can hardly arise except in a pending action for an intentional tort that will support a contractual or quasicontractual claim or in a pending action for negligence, the instances when a court other than the bankruptcy court can determine dischargeability of a debt under § 17a(8) will be infrequent. Although in such an eventuality the creditor may request relief from the stay under subdivision (d), the bankrupt's right to seek an injunction under § 17c(4) is also recognized by subdivision (e).

Subdivision (c). The exception for debts not dischargeable under § 17a(3), *viz.*, those not scheduled in time for proof and allowance, involves considerations different from those discussed in the preceding paragraph. Even though a debt is not listed in the schedules as originally filed, it cannot be said to be non-dischargeable unless, without the creditor's notice or actual knowledge, the case has progressed so far in the course of its administration that it is too late for the omitted creditor to prove his claim and avail himself of an equal opportunity with other creditors to participate in the administration of the affairs of the estate. See *In re Beerman*, 112 Fed. 662, 663 (N.D.Ga. 1901); 1A Collier ¶ 11.04, at 1149 (1960); *id.* ¶ 17.23 (1967). Subdivision (c) rests on the assumption that if a debt remains unlisted for 30 days after the first date set for the first meeting of creditors, it is then unlikely that the omitted creditor will have an opportunity to participate effectively in the administration and the stay provided by this rule is accordingly deemed annulled. As recognized by subdivision (e), the bankrupt may nevertheless be able to obtain a stay or an injunction under the Act.

Subdivision (d). A creditor who is subject to the stay of this rule may obtain relief therefrom in appropriate cases by filing a complaint in the court. The adversary proceeding thereby commenced is governed by the rules in Part VII subject to the requirement of subdivision (d) of this rule that the trial be set for the earliest possible date and given precedence over all other matters not of the same character. As noted in the previous paragraph, a stay against an omitted creditor is annulled at the end of 30 days following the first date set for the first meeting of creditors. If he should seek relief from the stay before the lapse of that period, he would disclose his knowledge of the bankruptcy and thereby substantially undermine his request for relief.

Subdivision (e). As subdivision (e) recognizes, the right of the bankrupt under § 11a or § 17c(4) of the Act obtain an injunction against the institution or continuance of an action on a debt against him is not affected by this rule. Such relief may be sought by answer to a complaint of the creditor filed under subdivision (d) of this rule as well as by a complaint. See Rules 701, 713, and 765. The court may terminate, annul, modify, or condition the stay provided by this rule in any proceeding brought for the purpose of obtaining such relief or of obtaining an injunction or restraining order against an action or the enforcement of a judgment that is subject to the stay. Annulment may be appropriate where a judgment on a nondischargeable debt has been inadvertently entered or enforced notwithstanding the stay. Since the stay provided by this rule does not operate with respect to any action, or the enforcement of any judgment, on a debt excepted from discharge by clause (1), (5), (6), or (7) of § 17a of the Act, the stay is not likely to be affected by proceedings brought for the purpose of obtaining a determination that a debt is not dischargeable under one of these clauses.

The premise of this rule is that in the usual case actions on dischargeable debts and on debts alleged to be nondischargeable under § 17a (2), (3), (4), and (8) should be stayed in the interest of protecting the bankrupt's right to his discharge. See *Hisey v. Lewis-Gale Hospital, Inc.*, 27 F. Supp. 20, 26 (W.D.Va. 1939); *In re Nichols*, 22 F.Supp. 694, 695 (W.D.Ky. 1938); *in re DeLauro*, 1 F.Supp. 678, 680 (D. Conn. 1932); *In re Nuttall*, 201 Fed. 557, 559 (S.D.N.Y. 1912). The rule not only relieves the bankrupt against the risk of failing to seek timely relief against creditors' actions but eliminates the need for litigation of the right to a stay in the usual case. While the initiative for bringing the issue of the right to a stay is shifted from the bankrupt to the creditor, facts providing a justification for modifying the stay will ordinarily be more easily provable by the creditor than disprovable by the bankrupt. The rule does not supersede § 11a or § 17c of the Act or restrict the discretion of the court as a court of equity to grant relief to any party.

Rule 402. Duties of Bankrupt.

In addition to performing other duties prescribed by these rules, the bankrupt shall (1) attend and submit to an examination at the first meeting of creditors and at such other times as ordered by the court; (2) attend at the hearing on a complaint objecting to his discharge and, if called as a witness, testify with respect to the issues raised; (3) if he has not yet filed a schedule of property pursuant to Rule 108, immediately inform the receiver or, if no receiver is appointed, the trustee, in writing, as to the location of real property in which he has an interest and the name and address of every person holding money or property subject to his withdrawal or order; (4) if the court directs, file a statement of the executory contracts, including unexpired leases, to which he is a party; (5) cooperate with the receiver, if any, and the trustee in the preparation of an inventory, the examination of proofs of claim, and the administration of the estate; and (6) comply with all orders of the court.

NOTES OF ADVISORY COMMITTEE ON RULES

Together with Rule 108, which adapts the provisions of § 7(a) (8) and (9) of the Act, and Rule 205, which incorporates the provisions of § 7a(10) of the Act, this rule imposes substantially all the duties prescribed for the bankrupt by § 7a of the Act. Clause (3) of this rule is an implementation of the provisions of Rule 602, and clause (4) authorizes the court to facilitate compliance with Rule 607 by requiring a bankrupt to make the disclosures respecting his executory contracts heretofore required of debtors under Chapters XI, XII, and XIII. See §§ 324(1), 424(1), and 624(1) of the Act.

Rule 403. Exemptions.

(a) Claim of Exemptions.

A bankrupt shall claim his exemptions in the schedule of his property required to be filed by Rule 108.

(b) Trustee's Report.

The trustee shall examine the bankrupt's claim for exemptions, set apart such as are lawfully claimed and allowable, and report to the court the items set apart, the amount or estimated value of each, and the exemptions claimed that are not allowable. The report shall be filed with the court no later than 15 days after the trustee qualifies. If the trustee reports that any exemption claimed is not allowable, he shall forthwith mail or deliver copies of the report to the bankrupt and his attorney.

(c) Objections to Report.

Any creditor or the bankrupt may file objections to the report within 15 days after its filing, unless further time is granted by the court within such 15-day period. Copies of the objections so filed shall be delivered or mailed to the trustee and, if the objections are by a creditor, to the bankrupt and his attorney. After hearing upon notice the court shall determine the issues presented by the objections. The burden of proof shall be on the objector.

(d) Procedure if No Trustee Qualified.

If no trustee has qualified, the bankruptcy judge shall file the report prescribed by subdivision (b) of this rule within 15 days after the first date set for the first meeting of creditors. If the bankrupt files objections to the report, the court shall appoint a trustee or receiver, who shall represent the estate in the hearing on the objections.

(e) Approval of Report if No Objections.

If no objections are filed within the time provided by this rule, the report shall be deemed approved by the court. On request, the court may, at any time and without reopening the case, enter an order approving the report.

(f) Claim of Exemption by Person Other Than Bankrupt.

If the bankrupt fails to claim the exemptions to which he is entitled, or if he dies before his exemptions have been set apart to him, his spouse, dependent children, or any other persons who are entitled to claim the exemptions allowable to the bankrupt may, within such time as the court may order, file a claim for his exemptions or object to the report.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (a) of this rule comes from § 7a(8) of the Act.

Subdivision (b) is derived from § 47a(6) of the Act and General Order 17(2). The time allowed the trustee for filing the report of the exemptions set apart to the bankrupt is extended to 15 days following the trustee's qualification in recognition of the fact that the 5-day period prescribed by the general order generates an excessive number of requests for extension. If the bankrupt needs more prompt determination of his right to exemptions, he may request expedition of the report by the trustee under Rule 906(c). The requirement for delivery of a copy of a report denying a claim of exemption to the bankrupt and his attorney is added by the last sentence of the subdivision to assist them in making a timely decision on whether to appeal.

Subdivision (c) of the rule is an elaboration of the last clause of General Order 17(2). The 10-day period allowed by the general order for the filing of objections to the trustee's report has been enlarged to 15 days, but the time cannot be extended under the rule after the expiration of the 15-day period. The allocation of the burden of proof made by the last sentence of subdivision (c) rests on the assumption that the trustee has performed the duties imposed on him by the subdivision (b) with due regard to the rights of the bankrupt as well as the creditors whom he represents. Although, the assumption might be questioned by the bankrupt, the case law has generally placed the burden of proof on the bankrupt whenever there is an issue raised as to his right to an exemption claimed. *In re Dederick*, 91 F.2d 646, 650 (10th Cir. 1937); *In re Campbell*, 124 Fed. 417, 421–22 (W.D.Va. 1903); *In re Stinemetz*, 38 Am. B.R. (N.S.) 544, 547 (Ref. D. Kans. 1938); 1 Collier ¶ 6.23 (1960). In view of the centering of the responsibility in the trustee to act generally on behalf of the creditors, it is not unfair to them and is consonant with principles of sound administration to require any objector to the report to carry the burden of sustaining his objection. See 3 Remington, *Bankruptcy* 177 (Henderson ed. 1957). But see *In re Campbell*, 124 Fed. 417, 421–22 (W.D.Va. 1903).

Subdivision (d). The procedure prescribed in subdivision (d) for a case in which there is no trustee is an adaptation of that approved in *Smalley v. Laugenour*, 196 U.S. 93 (1905). See 1 Collier, *supra* ¶ 6.21. The last sentence of the subdivision recognizes that if there are objections by the bankrupt or other beneficiary of the exemption law to a report made by the bankruptcy judge under this rule, the adversary character of the matter requires the appointment of a trustee or receiver to represent the interests of the estate. Rule 209(b) governs the appointment of a trustee, and Rule 201(a)(3) has particular reference to the appointment of a receiver in the kind of situation contemplated in this subdivision. If a creditor objects to the report of the bankruptcy judge, no trustee or receiver need be appointed, since the creditor may represent the interests of the estate and the bankrupt may defend the report insofar as it would allow his claim to exemptions.

Subdivision (e) recognizes that if no timely objection is filed to the report of exemptions, there is no issue before the court, and the bankrupt's right to the exemptions set apart in the report should not await further action of the court. See *In re Campbell*, 124 Fed. 417, 421–22 (W.D.Va. 1903); *Taylor Co. v. Williams*, 139 Ga. 581, 77 S.E. 386 (1913). The rule relieves the court of the formality of making an order of approval unless requested by a party and enables the party to obtain a formal order of approval after a case is closed without the necessity of reopening the case.

Subdivision (f) spells out the procedure to be followed by persons other than the bankrupt entitled to claim exemptions under the case law construing § 6 of the Act and under the proviso of § 8. It adopts the approach of the courts in allowing considerable flexibility in procedure to protect the bankrupt's spouse and other beneficiaries of the exemption laws against prejudice resulting from the failure of the bankrupt to make a timely application in his schedule. See, *e.g., In re Youngstrom*, 153 Fed. 98 (8th Cir. 1907) (bankrupt left state before bankruptcy; wife allowed to claim exemption when trustee was proceeding to sell property); *In re Edelman*, 172 F.Supp. 200, 202 (E.D.N.Y. 1959) (wife of bankrupt allowed to claim wage exemption for benefit of family when trustee sought to compel turnover of deposit in her name which contained funds derived from Bankrupt's wages); *In re Maxson*, 170 Fed. 356 (N.D.Iowa 1909) (husband allowed to claim exemption by "petition" 6 months after wife's bankruptcy notwithstanding her failure to claim exemption in schedule); *In re Luby*, 155 Fed. 659 (S.D.Ohio 1907) (wife of absconding bankrupt allowed to file claim for exemption before property sold by trustee). The court retains discretion under the subdivision, however, to refuse to entertain a claim for exemption because of the laches of the party asserting the claim or for other good cause. See, *e.g., In re Burnham*, 202 Fed. 762, 765–66 (W.D. Wash. 1913) (homestead claimed by wife of bankrupt denied when delay of over 3 years in making claim was not due to inadvertence).

Rule 404. Grant or Denial of Discharge.

(a) Time for Filing Complaint Objecting to Discharge.

The court shall make an order fixing a time for the filing of a complaint objecting to the bankrupt's discharge under § 14c of the Act. The time shall be not less than 30 days nor more than 90 days after the first date set for the first meeting of creditors, except that if notice of no dividend is given pursuant to Rule 203(b), the court may fix such time as early as the first date set for the first meeting of creditors.

(b) Notice.

The court shall give at least 30 days' notice of the time fixed for filing a complaint objecting to the bankrupt's discharge under § 14c of the Act except that only 10 days' notice is required if notice of no dividend is given under Rule 203(b). Such notice shall be given to all creditors in the manner provided in Rule 203, and to the trustee and his attorney, if any, to their respective addresses as filed with the court.

(c) Extension of Time.

The court may for cause, on its own initiative or on application of any party in interest, extend the time for filing a complaint objecting to discharge.

(d) Grant of Discharge.

On expiration of the time fixed for filing a complaint objecting to discharge, the court shall forthwith grant the discharge unless (1) a complaint objecting to the discharge has been filed, (2) the bankrupt has filed a waiver under Rule 405, (3) it appears that the bankrupt has failed to attend and submit himself to examination at the first meeting of creditors or at any meeting specially called for his examination, or (4) the prescribed filing fees have not been paid in full.

(e) Applicability of Rules in Part VII.

A proceeding commenced by a complaint objecting to discharge is governed by the rules in Part VII.

(f) Order of Discharge.

An order of discharge shall conform substantially to Official Form No. 24.

(g) Registration in Other Districts.

An order of discharge that has become final may be registered in any other district by filing in the office of the clerk of the district court of that district a certified copy of the order and when so registered shall have the same effect as an order of the court of the district where registered and may be enforced in like manner.

(h) Notice of Discharge.

Within 45 days after an order of discharge becomes final, the court shall mail a copy of such order to the persons specified in subdivision (b) of this rule.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivisions (a), (b), and *(c)* of this rule are adaptations of the provisions of §§ 14b(1) and 58b of the Act that pertain to the procedure for determining whether a discharge will be granted. The except clauses of the last sentence of subdivision (a) and the first sentence of subdivision (b) are correlated with provisions of Rule 203(b) and 302(e)(4) designed to facilitate the administration of estates when no dividend is anticipated. The time fixed by the court under subdivision (a) may be enlarged as provided in subdivision (c) and Rule 906(b).

The notice referred to in subdivision (b) is required to be given by mail and addressed to creditors as provided in Rule 203. The provision of § 58b of the Act for notice to the United States attorney of the time for filing objections to discharge has not been carried into the rule because of the ineffectualness of such a routine notice to serve its purpose of alerting that officer to the possible need for him to file a complaint objecting to the discharge. When the circumstances indicate the appropriateness of calling on the United States attorney to take an interest in the question of a bankrupt's discharge, the court may act under § 14d of the Act. See also 18 U.S.C. § 3057.

An extension granted on an application pursuant to subdivision (c) of the rule would ordinarily redound to the benefit only of the applicant, but the scope and effect of the extension would in any event depend on the terms of the extension.

Subdivision (d) of this rule is a revision of the first clause of § 14b(2) of the Act. If a complaint objecting to discharge is filed, the court's grant or denial of the discharge will be entered at the conclusion of the proceeding as a judgment in accordance with Rule 921. The inclusion of the clauses in subdivision (d) qualifying the duty of the court to grant a discharge when a waiver has been filed and when the bankrupt has failed to attend or submit to an examination is in accord with the construction of the Act. 1(A) Collier ¶ 14.16 (1966). If the bankrupt has failed to attend or submit to an examination, the court will ordinarily proceed under Rule 406 to determine whether he shall be deemed to have waived his right to discharge. As pointed out in the Note accompanying Rule 406, however, the court may proceed to determine whether the discharge should be denied on a ground specified in § 14c of the Act. The prohibition by clause (4) of subdivision (d) on the grant of a discharge to a bankrupt before the filing fees have been paid preserves a limitation embodied in the first clause of § 14b(2) of the Act.

Subdivision (e). An objection to discharge is now required to be made by a complaint, which initiates an adversary proceeding as provided in Rule 703. The requirements of the second sentence of § 58b of the Act respecting notice of the hearing upon objections to the bankrupt's discharge are superseded by Rules 704, 705, 712, and the other rules of Part VII which govern adversary proceedings.

Subdivision (f). Official Form No. 24, to which subdivision (f) refers, includes the provisions which are required by § 14f of the Act to be set out in the order of discharge.

Subdivision (g) is based on § 14g of the Act. Registration may facilitate the enforcement of the order of discharge in a district other than that in which it was entered. See 2 Moore ¶ 1.04[2] (1967). Because of the extraterritorial service of process authorized by Rule 704, however, registration of the order of discharge is not necessary under these rules to enable a discharged bankrupt to obtain relief against a creditor proceeding in any district of the United States in disregard of the injunctive provisions of the order of discharge.

Subdivision (h) is based on § 14h of the Act but omits its requirement that notice be given of the debts determined by the court to be nondischargeable and of the debts as to which proceedings to determine dischargeability are pending. The bankrupt and every creditor whose debt is the subject matter of any proceeding to determine dischargeability will otherwise have had notice of its pendency or disposition. Parties other than the bankrupt and the creditor whose debt is involved have no sufficient need of notice of the pendency or determination of such proceedings to warrant inclusion of this information in the notice of discharge required by subdivision (h). The debts to be specified in the notice required by § 14h of the Act could not in any event purport to be a complete list of the debts that may be nondischargeable.

Rule 405. Waiver of Discharge.

Any bankrupt may waive his right to discharge by a writing filed with the court.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is an adaptation of the first sentence of the proviso of § 14a of the Act. The rules eliminate the fiction that the adjudication operates as an application for a discharge, and no distinction is made between corporations and other persons in this regard. Accordingly the requirement of the Act that a waiver be filed before the hearing on the application for discharge is omitted.

Rule 406. Implied Waiver of Discharge.

If the bankrupt fails to attend and submit himself to examination at the first meeting of creditors, at any meeting specially called for his examination, or at the trial on a complaint objecting to his discharge, the court on motion shall, or on its own initiative may, set a time for hearing to determine whether the bankrupt shall be deemed to have waived his right to a discharge. Notice of the hearing shall be given the bankrupt and such other parties in interest as the court may designate.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule provides a procedure for determining whether a bankrupt has waived his right to a discharge under § 14e of the Act. It recognizes the right of the bankrupt to notice and an opportunity to be heard on the question whether his failure to attend and submit to an examination was excusable. Notwithstanding the omission in § 14e of any recognition of the possibility of excusing failure to appear or be examined at the hearing on objections to discharge, the courts have afforded the bankrupt an opportunity to justify a failure to appear or submit to examination at such a hearing as well as at a meeting of creditors. See *LaBarbera v. Grubard*, 112 F.2d 738 (2d Cir. 1940); *In re Burdick*, 62 F.Supp. 934 (W.D.N.Y. 1945); 1A Collier 1314.11 (1971). Notwithstanding the failure of the bankrupt to appear or be examined at a meeting or at the trial of the complaint objecting to his discharge, the court may proceed to determine whether the discharge should be denied on a ground specified in § 14c of the Act. If the plaintiff discharges his burden of proof at the trial, he is entitled to judgment denying the discharge, and the issues determinable at a hearing under this rule would thereby become moot.

Rule 407. Burden of Proof in Objecting to Discharge.

At the trial on a complaint objecting to a discharge, the plaintiff has the burden of proving the facts essential to his objection.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is an adaptation of Cal. Evid. Code § 500, which sets out the basic rule governing burden of proof in civil litigation. The rule supersedes the proviso at the end of § 14c of the Act. The proviso has generally been equated with a requirement that the objector make a prima facie case under § 14c. See, *e.g.*, *In re Pioch*, 235 F.2d 903, 905 (3d Cir. 1956) ("the burden of proof is on the objecting creditor to prevent the bankrupt's discharge, otherwise stated, the objecting creditor must make out a prima facie case"). See also *Feldenstein v. Radio Distributing Co.*, 323 F.2d 892, 893 (6th Cir. 1963); *Johnson v. Bockman*, 282 F.2d 544, 545 (10th Cir. 1960); *Industrial Bank of Commerce v. Bissell*, 219 F.2d 624, 625–26 (2d Cir. 1955); *Dixwell v. Scott & Co., Ltd.*, 115 F.2d 873, 875 (1st Cir. 1940); 1 Collier 1314.1–1314.2 (1971).

This rule does not deal with the burden of going forward with the evidence. Subject to the allocation by the rule of the initial burden of producing evidence and the ultimate burden of persuasion, the rule leaves to the courts the formulation of rules governing the shift of the burden of going forward with the evidence in the light of such considerations as the difficulties of proving the nonexistence of a fact and of establishing a fact as to which the evidence is likely to be more accessible to the bankrupt than to the objector. See, *e.g.*, *In re Haggerty*, 165 F.2d 977, 979–80 (2d Cir. 1948; *Federal Provision Co. v. Ershowsky*, 94 F.2d 574, 575 (2d Cir. 1938); *In re Riceputo*, 41 F.Supp. 926, 927–28 (E.D.N.Y. 1941).

Rule 408. Notice of Nondischarge.

If a waiver of discharge is filed, or if an order is entered denying or revoking a discharge or deeming the right thereto to have been waived, the court shall, within 30 days after the filing of the waiver or the entry of the order, give notice thereof to all creditors in the manner provided in Rule 203.

NOTES OF ADVISORY COMMITTEE ON RULES

The suspension by § 11f of the Act of the statute of limitations affecting any provable debt of a bankrupt terminates within 30 days after the bankrupt is denied his discharge or otherwise loses his right to a discharge. If, however, a bankrupt's failure to get a discharge does not come to the attention of his creditors until after the statutes of limitations have run, he obtains substantially the same benefits from his bankruptcy as the bankrupt who is discharged.

This new rule requires the court to notify creditors if a bankrupt fails to obtain a discharge because he filed a waiver of discharge under Rule 405, or because he lost his right thereto by virtue of an order denying or revoking his discharge under § 14c or § 15 of the Act or determining that he had waived his right to a discharge under Rule 406.

Rule 409. Determination of Dischargeability of a Debt; Judgment on Nondischargeable Debt; Jury Trial.

(a) Proceeding to Determine Dischargeability.

(1) *Person Entitled to File Complaint; Time for Filing in Ordinary Case.* A bankrupt or any creditor may file a complaint with the court to obtain a determination of the dischargeability of any debt. Except as provided in paragraph (2) of this subdivision, the complaint may be filed at any time, and a case may be reopened without the payment of an addition filing fee for the purpose of filing a complaint under this rule.

(2) *Time for Filing Complaint Under § 17c(2) of the Act; Notice of Time Fixed.* The court shall make an order fixing a time for the filing of a complaint to determine the dischargeability of any debt pursuant to § 17c(2) of the Act. The time shall be not less than 30 days nor more than 90 days after the first date set for the first meeting of creditors, except that if notice of no dividend is given pursuant to Rule 203(b), the court may fix such time as early as the first date set for the first meeting of creditors. The court shall give creditors at least 30 days' notice of the time so fixed except that only 10 days' notice is required if notice of no dividend is given under Rule 203(b). Such notice shall be given to all creditors in the manner provided in Rule 203. The court may for cause, on its own initiative or on application of any party in interest, extend the time fixed under this paragraph.

(b) Claim and Demand for Judgment on Nondischargeable Debt.

If his claim has not yet been reduced to judgment, the creditor shall include in a complaint or answer filed under subdivision (a) of this rule a statement of his claim and demand for judgment on the debt as provided in § 17c(3) of the Act.

(c) Jury Trial.

Either party may demand a trial by jury of any issue triable of right by a jury by serving on the other party and filing a demand therefor in writing at any time after the filing of a complaint under this rule and not later than 10 days after the service of the last pleading directed to such issue. Such demand may be indorsed on a pleading of the party. In his demand the party shall specify the issues which he wishes to be so tried. If he has demanded trial by jury for only some of the issues so triable of right, any other party, within 10 days after service of the demand or such lesser time as the court may order, may serve a demand for trial by jury of any other issues so triable of right in the proceeding. The trial of an issue for which a jury trial has been demanded shall be placed on the jury calendar of the district court when it is ready for trial unless (1) the bankruptcy judge determines after hearing on notice that the issue is not triable of right by a jury or (2) a local rule of court provides otherwise. Issues not triable of right by a jury may be tried by the bankruptcy judge, and motions and applications in the proceeding other than those necessarily incidental to and made during the course of the jury trail may be determined by the bankruptcy judge. The failure of a party to serve and file a demand in accordance with this rule constitutes a waiver by him of trial by jury. Rules 47–51 of the Federal Rules of Civil Procedure apply to a jury trial under this subdivision.

(d) Applicability of Rules in Part VII.

A proceeding commenced by a complaint filed under this rule is governed by the rules in Part VII.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule prescribes the procedures to be followed when a party requests the court of bankruptcy to determine dischargeability of a debt pursuant to § 17c of the Act. The provisions authorizing reduction of the time to be allowed for filing a complaint under the rule and of the required interval between the notice and the date fixed by the court are correlated with the provisions of Rules 203 (b), 302(e)(4), and 404(a) and (b) that enable the court to expedite the administration of estates in which no dividend is anticipated. Utilization of the expedited procedures authorized by these provisions for the handling of no-asset and nominal asset cases is discretionary, and the time fixed by the court under paragraph (2) may be extended as provided therein and in Rule 906(b).

Although a complaint that comes within § 17c(2) of the Act must ordinarily be filed before the determination of whether the bankrupt will be discharged, the court need not determine the issues presented by the complaint filed under this rule until the question of discharge has been determined under Rule 404. A complaint filed under this rule initiates an adversary proceeding as provided in Rule 703.

Jury Trial. Subdivision (c) preserves the right to jury trial where it exists under nonbankruptcy law and is an adaptation of the provisions of the Federal Rules of Civil Procedure that govern jury trials. Under the fifth sentence of the subdivision a demand for jury trial requires placement of an issue triable of right by the jury on the jury calendar of jury trials to be conducted by a district judge, but the bankruptcy judge may deny the demand if he determines after notice and hearing that there is no issue triable of right by a jury. The same sentence recognizes, however, that a local rule of court may make different provisions respecting the placement on the jury calendar, *e.g.*, by providing for immediate placement of the issue on the district court's calendar and restricting authority to grant or deny the demand to a judge of that court, or by providing for retention of the entire proceeding by the referee with authority to conduct the jury trial in the bankruptcy court.

PART V.—COURTS OF BANKRUPTCY; OFFICERS AND PERSONNEL; THEIR DUTIES

Rule 501. Courts of Bankruptcy and Referees' Offices.

(a) Courts of Bankruptcy Always Open.

The court of bankruptcy shall be deemed always open for the purpose of filing any pleading or other proper paper, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, and rules.

(b) Meetings and Hearings; Orders in Chambers.

All meetings of creditors and hearings shall be conducted in open court and so far as convenient in a regular court room. All other acts or proceedings may be done or conducted by a bankruptcy judge in chambers and at any place either within or without the district; but no hearing, other than one ex parte, shall be conducted outside the district without the consent of all parties affected thereby.

(c) Referee's Office.

The referee's principal office with a clerical assistant in attendance shall be open during business hours on all days except Saturdays, Sundays, and the legal holidays as listed in Rule 6(a) of the Federal Rules of Civil Procedure, but a local rule or order may provide that the referee's office shall be open for specified hours on Saturdays or particular legal holidays other than those listed in Rule 77(c) of the Federal Rules of Civil Procedure.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is adapted from subdivisions (a), (b), and (c) of Rule 77 of the Federal Rules of Civil Procedure.

Insofar as the acts the clerk is authorized to perform by the last sentence of Civil Rule 77(c) are ministerial, the referee may delegate their performance in bankruptcy cases to an assistant in his office pursuant to Rule 506. Rule 77(d) of the Federal Rules of Civil Procedure, dealing with notice of orders or judgments, is adapted in Rule 922.

As pointed out in the Note accompanying Rule 204 the regular places at which courts shall be held within each district and at which creditors' meetings may be held are determined by the Judicial Conference of the United States pursuant to § 37b(1) of the Act. The referee's office is his regular place of office designated by the Conference under this statutory provision.

Rule 502. Referees' Bonds Not Required.

A referee shall not be required to file a bond in order to qualify.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule conforms to Public Law 92–310, enacted June 6, 1972, which repealed the provisions of § 50 of the Act that refer to referees' bonds.

Rule 503. Restrictions on Referees.

A referee shall not engage in any transaction, directly or indirectly, with the estate and shall not act as trustee or receiver in any case under the Act. An active full-time referee shall not engage in the practice of law, and an active part-time referee shall not act as attorney for any party in any case under the Act.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is derived from § 39b of the Act. The rule does not include the restriction of § 39b on the activities of retired referees, since this is a matter which should be correlated to the benefits provided such referees by Congress. The disqualification required by clause (1) of § 39b is incorporated into Rule 505 (b).

Rule 504. Books, Records, and Reports of Referees.

(a) Records to be Kept; Reports to be Made.

The referee shall keep a docket for each case referred to him and shall keep a list of claims filed against the estate in each case in which it appears there will be a distribution to unsecured creditors after payment of the costs and expenses of administration. He shall keep such other books and records and make such reports as may be prescribed by the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States. All papers filed with the referee, all process issued and returns made thereon, all appearances, orders, verdicts, and judgments shall be entered chronologically in the referee's docket. These entries shall be brief but shall show the nature of each paper filed or writ issued and the substance of each order or judgment of the court and of the returns showing execution of process.

(b) Disposition of Papers of Closed Cases.

When a case is closed, the referee shall transmit all papers pertaining thereto to the clerk of the district court.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (a). This rule is derived from §§ 39a(9) and 42 of the Act, General Orders 1 (second paragraph), 24, and 26, and Rule 79(a) of the Federal Rules of Civil Procedure. A list of claims is required to be kept only in asset cases, *i.e.*, when a distribution to unsecured creditors other than administrative expense claimants is anticipated. The list serves no purpose except in such cases, and the referee should be relieved of the unnecessary burden in the large number of no-asset and nominal asset cases. The public character of the docket and list kept by the referee is provided for by Rule 508. Authority to prescribe other books and records to be kept and the reports to be made by referees is vested in the Director of the Administrative Office subject to the approval of the Judicial Conference. The authority so conferred falls within the responsibilities conferred upon the Director and the Judicial Conference by 28 U.S.C. §§ 604 and 605. See also §§ 34, 37, 40, 43, 53, and 62 of the Act. The last two sentences of subdivision (a) of the rule are adapted from Rule 79(a) of the Federal Rules of Civil Procedure.

The admissibility in evidence of copies of records kept by referees is governed by § 21d, e, and f of the Act and by the Federal Rules of Evidence, made applicable to cases and proceedings in bankruptcy by Rule 917.

Subdivision (b). The custody and disposition of papers transmitted to the clerk pursuant to subdivision (b) are governed by 28 U.S.C. § 457.

Rule 505. Nepotism, Influence, and Interest.

(a) Appointment or Employment of Relative of or Person Connected with Judge or Referee.

No person may be appointed as trustee, receiver, marshal, or appraiser or employed as accountant or auctioneer in a bankruptcy case (1) if he is a relative of any judge or referee of the court making the appointment or authorizing the employment, or (2) if he is so connected with any judge or referee of the court making the appointment or authorizing the employment as to render such appointment or employment improper.

(b) Disqualification of Judge or Referee from Acting in Case: Relationship to Party or Attorney; Interest in Case; Appearance of Influence.

Any judge or referee shall disqualify himself in any bankruptcy case (1) in which he is a relative of any party or his attorney, has a substantial, direct or indirect interest, has been of counsel, or is or has been a material witness, or (2) if his acting therein would justify the impression that any person can improperly influence him or unduly enjoy his favor, or that he is affected by the kinship, rank, position, or influence of any party or other person.

(c) Disqualification of Judge or Referee from Authorizing Employment of Attorney.

Any judge or referee shall disqualify himself from authorizing the employment and from determining the compensation of (1) a relative as an attorney in a bankruptcy case, or (2) an attorney in a bankruptcy case if the judge or referee is so connected with the attorney as to render it improper for him to authorize such employment.

NOTES OF ADVISORY COMMITTEE ON RULES

Restrictions respecting relatives. The restrictions on the appointment and employment of relatives have antecedents in 28 U.S.C. § 458, 18 U.S.C. § 1910, and 11 U.S.C. § 76a. The first of these statutory provisions prohibits the appointment to or employment in "any office or duty in any court" of a relative of any justice or judge of such court. This statute has been subjected to little interpretation, and it is not clear that it extends to such ad hoc and temporary appointments and employments as those listed in subdivision (a) of the rule. The other two statutes are directed only at the appointment of receivers and trustees who are related to judges of United States courts. Subdivision (a)(1) makes explicit as a rule of judicial administration for all bankruptcy cases that relatives of neither the judges nor the referees of any court of bankruptcy shall be appointed to any of the offices or employed in any of the responsibilities listed. The forbidden degree of relationship varies among the three statutes cited above. The more explicit definition of relative in the Act (§ 1(27)), which includes any person related by affinity or consanguinity within the third degree as determined by the common law and includes the spouse, is the reference intended by this rule.

The rule is not intended to restrict creditors in the exercise of their right to elect a trustee pursuant to Rule 209(a). Nor does the rule interdict the choice by the trustee or any other party of an attorney who is a relative of the judge or referee before whom a proceeding under the Act is pending. The judge or referee is, however, required to disqualify himself from authorizing the employment or determining the compensation of a relative as an attorney under the Act and must disqualify himself from acting in any proceeding in which a relative is an attorney or a party.

Improper connections. The provisions in subdivisions (a)(2) and (c)(2) are adaptations of the "improper connection" clause of 28 U.S.C. § 455. The first of these provisions goes beyond the statute in prohibiting the appointment or employment of a person to an office or duty listed therein if he has the described connection with any judge or referee of the court authorizing the appointment or employment.

Interest or appearance of influence, Subdivision (b)(1) combines provisions in § 39b(1) of the Act and the first half of 28 U.S.C. § 455 and subjects a judge and referee to essentially the same obligation to disqualify himself on account of interest or personal involvement in a case. *Cf. Dubnoff* v. *Goldstein,* 385 F. 2d 717, 720–21 (2d Cir. 1967). Subdivision (b)(2) is adapted from Canon 13 of the Canons of Judicial Ethics of the American Bar Association.

Rule 506. Delegation of Ministerial Functions.

The referee may delegate any ministerial function to an assistant employed in his office or, with the approval of the chief judge of the district court, to any person employed in the office of the clerk of the district court.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule enables the referee to delegate any function he is required or authorized by the Act or by these rules to perform to an assistant in his office or to an employee in the office of the clerk of the district court, unless the function is a judicial one. The referee's authority to delegate applies whether the duty is imposed or the authority is conferred on him when acting as "the court," as "the bankruptcy judge," or as "the referee." The "court" includes the referee, as provided in § 1(9) of the Act, and "bankruptcy judge" includes the referee, as provided in Rule 901(7).

Except in offices where there has been a consolidation of the offices of the clerk of the district court and of the referee, the delegation authorized by this rule will ordinarily be made to an employee in the referee's office. When a district judge is acting as a bankruptcy judge, he may delegate any duty or authority to perform ministerial acts under these rules to the clerk of the district court and his deputies and assistants as provided in 28 U.S.C. § 956.

Rule 507. Books and Records Kept by Clerks.

(a) Bankruptcy Docket.

The clerk of the district court shall keep a book known as the "bankruptcy docket" of such form and style as may be prescribed by the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States and shall enter therein each bankruptcy case.

(b) Transmission of Papers.

The clerk shall transmit to the referee all papers which pertain to every case referred to him, unless the judge otherwise directs.

(c) Index of Cases; Certificate of Search.

The clerk shall keep an index of all cases under the Act filed in or transferred to the court and of all discharges granted by the court. On request, the clerk shall make a search of the index and papers in his custody and issue a certificate as to whether a case has been filed in or transferred to the court or a discharge entered in its records.

(d) Public Access.

The docket and index kept by the clerk under this rule shall be open to examination by any person without charge.

(e) Other Books and Records of the Clerk.

The clerk shall also keep such other books and records as may be required from time to time by the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule supersedes §§ 51(4) and 71 of the Act and the first paragraph of General Order 1. Subdivision (a) is an adaptation of the first sentence of Rule 79(a) of the Federal Rules of Civil Procedure. Subdivision (b) is a restatement of the duty of the clerk imposed by § 51(4) of the Act. Subdivision (c) provides for the index of cases and discharges as heretofore required by § 71 of the Act. The provision in § 71 of the Act for a fee to the clerk for issuing a certificate of search is now superseded by 28 U.S.C. § 1914(b). The provisions for public access to the clerk's docket in General Order 1 and to the index of cases in § 71 of the Act are merged in subdivision (d) of this rule. Subdivision (e) is an adaptation of Rule 79(d) of the Federal Rules of Civil Procedure.

Rule 508. Public Access to Records and Papers in Bankruptcy Cases.

Subject to the provisions of Rules 918, all papers filed in a bankruptcy case, the referee's docket, and the list of claims, if any, are public records and shall be open to examination by any person at reasonable times without charge.

NOTES OF ADVISORY COMMITTEE ON RULES

The provisions of this rule regarding the referee's docket and list of claims are derived from General Orders 1 and 24. A list of claims is required by Rule 504(a) to be kept only in asset cases. This rule also covers the subject matter of § 49 of the Act (Accounts and Papers of Receivers and Trustees). The recognition of the right of public access to papers filed in a bankruptcy case accords with the rule of the common law that court records are public documents open to inspection, subject to reasonable regulation. 20 Am. Jur. (2d), Courts § 61 (1965); Anno., 175 A.L.R. 1260 (1948). Rule 918 authorizes the court in particular circumstances to enter protective orders respecting secret, confidential, scandalous, or defamatory matter contained in any paper filed in a bankruptcy case. Referees are relieved by these rules of the duty imposed on them by § 39a(4) of the Act to "furnish or cause to be furnished such information concerning proceedings before them as may be requested by parties in interest." The right of such parties to information in the public records of the court is sufficiently assured by this rule, by Rule 218(3), and by 18 U.S.C. § 154, which imposes criminal sanctions for refusal of a "reasonable opportunity" to a party in interest to inspect "documents and accounts relating to the affairs of estates in his charge." See also the second paragraph of the Note accompanying Rule 218 *supra*.

Rule 509. Filing of Papers.

(a) Place of Filing.

A petition commencing a bankruptcy case shall be filed with the clerk of the district court. After reference, all papers, including a petition filed in a pending case and proofs of claim, shall be filed with the referee unless otherwise directed by local rule or by order of the judge.

(b) Notation of Time of Filing.

The clerk of the district court shall note on the petition the date and hour of its filing, and the clerk or the referee shall note the date of its filing on each paper thereafter filed with him.

(c) Error in Filing.

A paper intended to be filed but erroneously delivered to the trustee or receiver, or the attorney for either of them, or to the district judge, referee, or clerk of the district court, shall, after the date of its receipt has been noted thereon, be transmitted forthwith to the proper person. In the interest of justice, the court may order that the paper shall be deemed filed as of the date of its original delivery.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (*a*) is an adaptation of General Order 20. There will be few cases where papers subsequent to the petition should not be filed with the referee. Subdivision (a) recognizes, however, that considerations of administrative convenience may dictate a variation from the normal filing practice prescribed by the rule. In particular the second sentence of this subdivision, by allowing a different provision by local rule, accommodates those offices in which consolidation of personnel and facilities of the clerk of the district court and the referee, or the physical locations of the clerk's and referee's offices, make it desirable to require all papers, including proofs of claim, to be filed with the clerk of the district court, who acts for the referee in receiving any paper filed in the proceeding after a reference.

Subdivision (*b*) is derived from General Order 2.

Subdivision (*c*). By subdivision (c), when a paper to be filed is misdelivered to one of a number of persons connected with a bankruptcy case or the bankruptcy court, the recipient is charged with the duty of transmitting the paper to the proper person. If not contrary to the interest of justice the erroneous delivery may be deemed by the court to be the equivalent of a proper filing. This subdivision is new, but it is an extension of the rule of practice prescribed in the last sentence of General Order 21(1) respecting proofs of claim delivered to the trustee. See 3 Collier ¶ 57.10 (1961).

Rule 510. Issuance and Certification of Copies of Papers.

On request, the referee or the clerk of the district court shall issue a certified copy of the record of any proceeding in a bankruptcy case or of any paper filed with the court.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivisions d, e, and f of § 21 of the Act declare the evidentiary effect to be given certified copies of certain orders entered in a bankruptcy case, of proceedings before a referee, and of "papers." Section 21d refers to "certified copies," "issued by the clerk, referee, or an employee of the referee designated by his order which shall be filed in the office of the clerk." This rule makes explicit the duty of the referee or the clerk to issue a certified copy of the record of any proceeding in a bankruptcy or any paper filed with the court. The issuance of such a certified copy is a ministerial duty of the kind delegable by the referee to an assistant under Rule 506, but the admissibility and evidentiary effect of the copy are to be governed by the Federal Rules of Evidence so far as federal courts are concerned and by subdivisions d, e, and f of § 21 so far as state courts are concerned. Rule 917 makes the Federal Rules of Evidence applicable in bankruptcy cases. Rule 1005 of the Federal Rules of Evidence allows the contents of an official record or of a paper filed with the court to be proved by a duly certified copy, and a copy certified and issued in accordance with this Bankruptcy Rule 510 is accorded authenticity for this purpose by Rule 902(4) of the Federal Rules of Evidence.

Ordinarily only the officer having custody of the original record or paper when the request is made would be in a position to issue a certificate under this rule. See 2 Collier ¶ 21.27 (1964).

Rule 511. Recording and Reporting of Proceedings.

(a) Record of Proceedings.

Whenever practicable, the court shall require a record to be made of all proceedings in bankruptcy cases. The record may be taken by sound recording or by a reporter employed on authorization of the court to take a verbatim record by shorthand or other means. The expense of making the record shall be a charge against the estate unless the court assesses the cost or a part thereof against a person who asserts a vexatious or frivolous claim or defense. The reporter or operator of a recording device shall attach his certificate to the original shorthand notes or other original records taken under this rule and promptly file them with the court for retention for at least 6 months and as long thereafter as the court directs.

(b) Transcripts of Proceedings.

Upon the request of any person, including the United States, who has agreed to pay the fee therefor, or of the bankruptcy judge, the reporter or a typist shall promptly transcribe the original records of the requested parts of a proceeding and deliver the transcript, certified by him, to the person making the request. A certified copy of any transcript so made shall be promptly filed with the court by the person making the transcript. The fees for transcripts shall be charged at rates prescribed by the court but in no event shall a separate fee be charged for the copy filed with the court pursuant to the preceding sentence. The cost of transcription shall be a charge against the estate only when approved by the court.

(c) Admissibility of Record in Evidence.

When properly certified, a sound recording or a transcript of a proceeding shall be admissible evidence to establish the record thereof and shall be deemed prima facie a correct statement of the testimony taken and the proceedings had.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (*a*) of this rule declares and implements as a requisite of sound bankruptcy administration that all proceedings in bankruptcy cases shall be recorded verbatim. Ordinarily it will be possible for the record to be taken by an electronic or other sound device, but a stenographer may be employed as reporter, as heretofore authorized by § 38(7) of the Act, for the purpose of taking a record in shorthand, by stenotype, or other means. The court should not allow an examination, hearing, or other proceeding in a bankruptcy case to continue without recording unless neither a stenographer nor an operable recording device is available and neither can be obtained without undue delay. The second sentence of subdivision (a) modifies the rule of General Order 10 in authorizing relief of the estate from liability for the cost of recording proceedings which result from the assertion of vexatious or frivolous claims. The third sentence of the subdivision incorporates a requirement comparable to that imposed by 28 U.S.C. § 753(b) on official court reporters.

Subdivision (*b*) is an adaptation of provisions in 28 U.S.C. § 753 (b) and (f). The person who prepares the transcript as provided in this subdivision need not have taken down the original record by shorthand or other means but may be a typist who prepares the transcript from a sound recording. There is no requirement that the typist be an employee of the bankruptcy court. Variances in prevailing rates of charges for stenographic services and other circumstances having a legitimate bearing on charges made in bankruptcy cases may be reflected in the rates prescribed by the court under this subdivision. The last sentence of this subdivision emphasizes the differentiation that must be made between the expense of the recording by device or shorthand and the cost of the transcription for the purpose of allocating the charges under this rule. When the bankruptcy judge requires a transcript that is not an additional copy requested by someone who has paid the fee for the original, the cost of such transcript would be properly charged to the estate.

Subdivision (*c*) is an adaptation of provisions found in § 21d of the Act, 28 U.S.C. § 753(b), and Rule 80(c) of the Federal Rules of Civil Procedure. When the record of a proceeding in a bankruptcy case is admissible in evidence in a later proceeding, a properly certified sound recording is not objectionable because of the mode or form of the recording. It is of course necessary to insure "the accuracy and identity of the record," which includes sufficient intelligibility to meet minimal standards of reliability. "If these requirements of reliability are met, the nature of the record as well as the mode of its preparation should be immaterial." *Tatum* v. *United States*, 249 F. 2d 129, 131 (D.C. Cir. 1957), cert. denied 356 U.S. 943 (1958). Subdivision (c) is consonant with the provisions of the Federal Rules of Evidence and supplements them by according prima facie effect to a properly certified recording or transcript as a correct statement of the testimony and proceedings.

Rule 512. Designated Depositories.

(a) Designation.

The referees shall designate by order banking institutions as depositories for the money of estates. Each depository so designated shall give security in accordance with subdivision (b) of this rule for the prompt repayment of deposits made therein. The referees may from time to time change the number of depositories, the designations, or the amount of security required. Except as provided in the last sentence of subdivision (b), the authority of referees under this rule shall be exercised by a majority vote.

(b) Security Required.

Except as provided hereinafter, the referees shall require from each designated depository a bond secured by the undertaking of an authorized corporate surety approved by them, or by the deposit of securities designated in Title 6, U.S.C. § 15. Securities accepted for deposit in lieu of a surety upon a depository bond shall be deposited by the depository bank in the custody of a Federal Reserve bank or branch thereof designated by the referees and shall be subject to the order of the referees. No bond or other security shall be required for any deposits fully insured under Title 12, U.S.C., § 1821, and any referee may designate a banking institution for the purpose of receiving deposits so insured.

(c) Prohibition of Deposits When Adequacy of Security Doubtful.

No trustee or receiver or other person shall deposit in any depository money received or held by him as a fiduciary under the Act if he has reasonable cause to believe that the bond or the security therefor is or may be inadequate in view of existing and expected deposits.

(d) Condition of Bond; Place of Filing; Proceeding on Bond.

The condition of a bond given under this rule shall be that the designated banking institution will well and truly account for all money deposited with it as depository and for all interest payable on savings and time deposits when duly authorized, will pay out such money and interest only in accordance with the Act, these rules, and rules and orders of the court, and will otherwise faithfully perform all its duties as depository. A bond given under this rule shall be filed with the court and may be proceeded upon in the name of the United States for the use of any person injured by a breach of the condition.

(e) New Bond: When Required.

The referees shall require a depository to give a new bond whenever the prior bond, together with securities deposited pursuant to subdivision (b), does not appear to constitute adequate security in view of existing and expected deposits.

(f) Revocation of Designation.

If any depository fails, within the time fixed, to give a bond under this rule or to deposit securities adequate for existing and expected deposits, the referees shall order the depository immediately to pay over all money on deposit with it, with all interest payable thereon, and shall revoke its designation.

(g) Relief from Liability on Bond.

A surety on the bond of a depository may, by an application setting forth the grounds therefor, request to be relieved from liability with respect to any subsequent default of the depository. If, after hearing upon notice to the depository, other sureties, trustees, and other representatives of estates having money in the depository, the referees determine that the application can be granted without injury to any party in interest, the applicant shall be relieved and a new bond or other appropriate security shall be required.

(h) Reports Required of Designated Depositories.

The Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States shall prescribe by regulation the reports to be made by designated depositories.

Notes of Advisory Committee on Rules

This rule is based on § 61 of the Bankruptcy Act and General Order 53. It vests the authority to designate and terminate designations of depositories in the referees rather than the judges in recognition of the fact that the referees are more likely to be familiar with the considerations that ought to govern the exercise of such authority. The subdivision contemplates that the designation of depositories in any territory shall be made by the referees designated by the Judicial Conference pursuant to § 37 of the Act to serve that territory. A bond given pursuant to the rule should accordingly be filed with the court rather than with the clerk of the court as provided in § 50h of the Act. *Cf.* Rule 509(a). The last sentence of subdivision (b) permits any referee to designate a depository for receiving funds to the extent they are insured by the Federal Deposit Insurance Fund. Any other designation shall be made by the referees designated to serve the territory acting concurrentely. Since the rule recognizes only corporate sureties references in General Order 53 to qualifications of individual sureties and to deceased sureties are omitted from this rule. For the same reason the 5-year limitation imposed by General Order 53(7) on the term of a depository bond is deleted, this matter being left for prescription by the referees. The rule omits the provisions in General Order 53(9) for termination of a surety's liability on a bond when a new bond is approved, since the term of the obligation should be determined by reference to its language and the order approving the bond. The responsibility for prescribing reporting requirements for designated depositories is assigned to the Director of the Administrative Office subject to the approval of the Judicial Conference to permit flexibility and the prompt utilization of new procedures and technological improvements as they are developed. The provision in subdivision (d) regarding a proceeding on a bond given under this rule is derived from the § 50h of the Act. *Cf.* Rule 717. Such a proceeding is governed by the rules in Part VII. See the Note accompanying Rule 701. See also Rule 925.

Rule 513. Special Masters.

If a reference is made in a bankruptcy case by a judge to a special master, the Federal Rules of Civil Procedure applicable to masters apply.

Notes of Advisory Committee on Rules

The Federal Rules of Civil Procedure applicable to masters include the third sentence of Rule 52(a) and Rule 53. Although references to special masters may be made pursuant to the Federal Rules of Civil Procedure, "A reference to a master shall be the exception and not the rule." Fed.R.Civ.P. 53(b); 5 Moore ¶¶ 53.02. 53.12[6] (1969). This rule does not contemplate that a referee shall ever have occasion to refer any matter to a special master.

Rule 514. Closing Cases.

Whenever it appears that an estate has been administered and the court has passed upon the final account and discharged the trustee, the case shall be closed.

Notes of Advisory Committee on Rules

This rule is adapted from § 2a(8) of the Act. Dismissal of a case for want of prosecution or failure to pay filing fees is governed by Rule 120. An estate may be closed even though the period allowed by Rule 302(e) for filing claims has not expired. 1 Collier ¶ 2.48 (1968). The closing of a case may be expedited when a notice of no dividends is given under Rule 203(b), when no final meeting is necessary under Rule 204(c), and when no trustee has been elected or appointed under Rule 211.

Rule 515. Reopening Cases.

A case may be reopened on application by the bankrupt or other person to administer assets, to accord relief to the bankrupt, or for other good cause. The application shall be filed with the clerk of the district court having custody of the papers in the case. The case shall be referred forthwith for action on the application and for further proceedings therein.

Notes of Advisory Committee on Rules

This rule is an elaboration of the provisions of § 2a(8) of the Act authorizing estates to be reopened for cause shown. Although this provision was amended in 1938 to clarify the authority of the court to reopen for purposes other than the administration of newly discovered assets, see 1 Collier ¶ 2.49 (1968), the courts have been reluctant to sustain exercises of this authority for the benefit of the bankrupt. See, *e.g., Saper* v. *Viviani*, 226 F.2d 608, 610–11 (2d Cir. 1955), rev'g sub nom. *In re John Viviane & Son*, 132 F. Supp. 633 (S.D.N.Y. 1955); *In re Perlman*, 116 F.2d 49 (2d Cir. 1940) (Clark, C.J., dissenting), rev'g 34 F.Supp. 685 (S.D.N.Y. 1940); *In re Barlean*, 279 F.Supp. 260 (D. Mont. 1968). The grant of an application to reopen under this rule remains a matter of discretion of the court, but relief to the bankrupt is explicitly recognized as a proper cause for the reopening. A principal ground for refusing to reopen a case to enable a bankrupt to get a discharge has been the rule that the closing of an estate without the grant of a discharge is the legal equivalent of a denial of discharge. *Perlman* v. *322 West Seventy-Second Street Co., Inc.*, 127 F.2d 716, 718–19 (2d Cir. 1942); *In re Butts*, 123 F.2d 250, 251 (2d Cir. 1941). This rule has been substantially qualified by § 17b of the Act, added by Pub.Law 91–467, and Rule 120(c). See the Note accompanying the latter rule.

An application under this rule is not subject to the one-year limitation of Rule 60(b) of the Federal Rules of Civil Procedure, which generally applies to motions for relief from an order of the court. See Rule 924. The provision for automatic reference is new. *Cf. In re Loewerree*, 157 F.2d 831, 834 (2d Cir. 1946). It is consonant with the policy of the rules to eliminate unnecessary paperwork and involvement of the district judge in bankruptcy cases otherwise than as provided in Rule 102. *Cf.* Rule 217(b). The fees, if any, to be charged for reopening cases are prescribed by the Judicial Conference pursuant to § 40c of the Act.

A number of rules authorize the court to take action respecting matters connected with a closed case without the necessity of a reopening. See, *e.g.*, Rule 403(e), authorizing entry of order approving exemptions after a case is closed when no objections were filed to the trustee's report; Rule 608, authorizing abandonment of property of inconsequential value recovered after a case is closed and entry of a post-closing order approving abandonment of scheduled but unadministered property; Rule 924, incorporating in these rules Rule 60(a) of the Federal Rules of Civil Procedure, which enables the court on its own initiative to correct clerical mistakes in judgments, orders, and other parts of the records and errors therein due to oversight or omission. A judgment determined to be nondischargeable pursuant to Rule 409 may be enforced after a case is closed by a writ of execution obtained pursuant to Rule 769 or Rule 69 of the Federal Rules of Civil Procedure.

PART VI.—COLLECTION AND LIQUIDATION OF THE ESTATE

Rule 601. Petition as Automatic Stay Against Lien Enforcement.

(a) Stay Against Lien Enforcement.

The filing of a petition shall operate as a stay of any act or the commencement or continuation of any court proceeding to enforce (1) a lien against property in the custody of the bankruptcy court, or (2) a lien against the property of the bankrupt obtained within 4 months before bankruptcy by attachment, judgment, levy, or other legal or equitable process or proceedings.

(b) Duration of Stay.

Except as it may be terminated, annulled, or modified by the bankruptcy court under subdivision (c), (d), or (e) of this rule, the stay shall continue until the bankruptcy case is dismissed or closed, or until the property subject to the lien is, with the approval of the court, set apart as exempt, abandoned, or transferred.

(c) Relief from Stay.

On the filing of a complaint seeking relief from a stay provided by this rule, the bankruptcy court shall, subject to the provisions of subdivision (d) of this rule, set the trial for the earliest possible date, and it shall take precedence over all matters except older matters of the same character. The court may, for cause shown, terminate, annul, modify, or condition such stay. A party seeking continuation of a stay against lien enforcement shall show that he is entitled thereto.

(d) Ex Parte Relief from Stay.

On the filing of a complaint seeking relief from a stay provided by this rule, relief may be granted without written or oral notice to the adverse party if (1) it clearly appears from specific facts shown by affidavit or by a verified complaint that immediate and irreparable injury, loss, or damage will result to the plaintiff before the adverse party or his attorney can be heard in opposition, and (2) the plaintiff's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting his claim that notice should not be required. The party obtaining relief under this subdivision shall give written or oral notice thereof as soon as possible to the trustee or receiver or, if none has qualified, to the petitioner or petitioners and, in any event, shall forthwith mail to such person or persons a copy of the order granting relief. On 2 days' notice to the party who obtained relief from a stay provided by this rule without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its reinstatement, and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(e) Availability of Other Relief.

Nothing in this rule precludes the issuance of, or relief from, any stay, restraining order, or injunction when otherwise authorized.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (a). This rule adopts features of the stay provided by § 148 of the Act against an act or proceeding to enforce a lien on the property of a bankrupt estate (1) if the property is in the custody of the court or (2) if the lien was obtained by means and at a time rendering it vulnerable to avoidance under § 67a of the Act, whether or not the court has custody of the property. The premise of the rule is that such a stay is no less needful in straight bankruptcy than in a reorganization case to protect creditors against prejudicial dismemberment and disposition of the estate before a trustee or receiver can qualify. The stay provided by this rule is to be distinguished from that provided by Rule 401, which reinforces §§ 11a, 14f(2), and 17c(4) of the Act by protecting the bankrupt against harassment and possible frustration of his right to a discharge.

The first branch of subdivision (a) protects the custody of the bankruptcy court against interference by an attempt to enforce a lien, whether the attempt is by a judicial proceeding or by a nonjudicial mode of enforcement. Property is in the custody of the bankruptcy court if it is in the actual or constructive possession of the bankrupt at the date of bankruptcy. See *Ex parte Baldwin*, 291 U.S. 610, 615 (1934); *Chicago Board of Trade v. Johnson*, 264 U.S. 1, 12 (1924); *Lazarus, Michel & Lazarus v. Prentice*, 234 U.S. 263, 266–67 (1914); *Acme Harvester Co. v. Beekman Lbr. Co.*, 22 U.S. 300, 307 (1911); 1 Collier ¶ 2.62[1] (1968); MacLachlan, *Bankruptcy* 205 (1956); Mussman & Riesenfeld, *Jurisdiction in Bankruptcy*, 13 Law & Contempt. Prob. 88, 92, 98 (1948). Insofar as such property is concerned, the rule is a substantially restricted restatement of the much quoted and applied dictum of *Mueller v. Nugent*, 184 U.S. 1, 14 (1901), that "the petition is a *caveat* to all the world, and in effect an attachment and injunction." Once the jurisdiction of the court has attached, any act or proceeding brought in another court to enforce a lien against such property cannot disturb the custody of the bankrupt court without its consent. See *Isaac v. Hobbs Tie & Timber Co.*, 282 U.S. 734, 737 (1931). The automatic stay is thus a logical corollary of the bankruptcy court's exclusive jurisdiction to deal with the property of the bankrupt within its custody from the date of bankruptcy. The term "lien" is used in the rule to include a consensual security interest in personal or real property, a lien obtained by judicial proceedings, a statutory lien, or any other variety of charge against property securing an obligation.

The second branch of subdivision (a) recognizes that a lien obtained within 4 months before bankruptcy by judicial process or proceedings is likely to be voidable in summary proceedings under § 67a of the Act. See MacLachlan, *Bankruptcy* § 205 (1956). While avoidance depends on a showing that the debtor was insolvent when the lien was obtained, the lien is voidable without regard to the creditor's mental state, and the stay is needed to prevent the frustration of the purpose of § 67a by a transfer of the property subject to the voidable lien to a bona fide purchaser. *Cf. Clarke v. Larremore*, 188 U.S. 486 (1903).

All creditors receive notice of the effect of the petition as a stay along with notice of the first meeting of creditors (see Official Form No. 12). The bankruptcy court may appropriately also give notice of the stay to the judge or other officer of a nonbankruptcy court in which an action subject to the stay is known to be pending, particularly when there appears to be a likelihood that action in disregard of the stay may occur.

Subject to the possible limitation imposed by the second clause of subdivision (a), the stay provided by this rule does not operate to prevent the continuation of any proceeding or act to enforce a lien when the creditor has possession at the time of bankruptcy. Thus a pledgee may enforce his lien after bankruptcy, see 1 Collier ¶ 2.62[3] (1968); and a mortgagee who has commenced foreclosure proceedings in a state or federal district court before bankruptcy may continue them notwithstanding the stay, see *id.* ¶ 2.63[1]. Since initiation of nonjudicial foreclosure of a mortgage under a power of sale does not ordinarily deprive the mortgagor of possession, however, the stay bars further steps in enforcement of the mortgage although the foreclosure procedure was commenced before bankruptcy. See 1 Collier ¶ 2.62[2] (1968). Judicial proceedings to enforce the lien of a judgment or levy obtained over 4 months before bankruptcy may continue unabated by the stay of this rule, unless the property remained in the custody of the bankrupt at the time of the filing of the petition. Even if the creditor has obtained a lien by judicial proceedings within the 4 months before bankruptcy but the lien is no more than a step in the enforcement of a lien obtained by such proceedings over 4 months before bankruptcy, the stay does not operate against continuation of the proceedings to enforce such prior lien. *Cf. Straton v. New*, 283 U.S. 318 (1931); *Metcalf v. Barker*, 187 U.S. 165 (1902). Likewise proceedings on a judgment entered within the 4-month period foreclosing a prior consensual or statutory lien are not subject to the stay of the rule unless the bankrupt retained custody at bankruptcy. See generally 1 Collier ¶ 2.63[1] (1968); 4 *id.* ¶¶ 67.04[1], 67.08[1], 67.11 (1967).

Subdivisions (*b*), (*c*), *and* (*d*). Whether the enforcement of a lien against property in the bankruptcy court's custody by an act or proceeding after bankruptcy without permission of the bankruptcy court is void has been the subject of conflicting views by the courts and commentators. See 1 Collier ¶ 2.62[1] & [2] (1968). This rule consists with the view that such an act or proceeding is void, but subdivision (c) recognizes that in appropriate cases the court may annul the stay so as to validate action taken during the pendency of the stay.

No substantive right is abridged, enlarged, or modified by a limited stay of the enforcement of a lien against property in the court's custody or a lien potentially voidable under § 67a. *Continental Ill. Nat. Bank & Trust Co. v. Chicago, R.I. & Pac.Ry.*, 294 U.S. 648, 676, 681 (1935). The stay does not extend beyond the dismissal or closing of the case in any event and may be terminated, annulled, or modified earlier on the complaint of the lienor seeking relief pursuant to subdivision (c) or (d). Such relief may also result from a determination in the lienors' favor on a complaint by the trustee, receiver, or other party in interest seeking avoidance of the lien or other relief in an adversary proceeding governed by Rule 701(2) or (3). If the court avoids the lien, preserves it for the benefit of the estate, or orders the property sold free of the lien, the lienor's rights against the property are terminated.

The stay provided by this rule remains effective during the pendency of the case unless sooner modified by the court or the property subject to the lien passes from the control of the court. Any party subject to the stay may, however, obtain a prompt determination of the question whether it ought to be continued, and under extraordinary circumstances, spelled out in the rule, relief from the stay provided by the rule may be granted immediately and without notice. In such an event, however, the trustee, receiver, or other party in interest is entitled to move for reinstatement of the stay on 2 days' notice, or shorter notice if the court approves. The procedure provided under subdivision (d) is patterned on that governing the issuance of a temporary restraining order under Rule 65(b) of the Federal Rules of Civil Procedure, but the order granting the relief from the stay is not subject to the 10-day limit that applies to a temporary restraining order. In any proceeding to determine whether the stay provided by this rule shall be continued, the burden of justification rests on the trustee, receiver, or other party seeking its continuation.

Subdivision (*e*). The stay provided by this rule is in no way a limitation on the discretion and power of the court of bankruptcy under § 2a(15) of the Act to grant or deny or modify relief in the nature of an injunction.

Rule 602. Duty of Trustee or Receiver to Give Notice of Bankruptcy.

(a) Real Property.

As soon as possible after his qualification a receiver shall record a certified copy of the petition without schedules or of the order of adjudication, if any, in the office where transfers of real property are recorded in every county where the bankrupt has an interest in real property not exempt from execution. If a certified copy of the petition or order of adjudication has not previously been recorded in an office where recordation is required by the preceding sentence, the trustee shall as soon as possible after his qualification record in every such office a certified copy of the petition without schedules or of the order of adjudication, in any, or of the order approving his bond. The recording of a copy pursuant to this subdivision is not necessary, however, in the county in which is kept the record of the original proceedings in the case or in any office where such a copy has previously been recorded.

(b) Personal Property.

As soon as possible after his qualification a receiver or, if a receiver has not done so, the trustee shall give notice of the bankruptcy to every person known to be holding money or property subject to withdrawal or order of the bankrupt including every bank, building and loan association, public utility company, and landlord with whom the bankrupt has a deposit, and to every insurance company which has issued a policy having a cash surrender value payable to the bankrupt. No notice need be given, however, to any of the forenamed persons who has knowledge or has previously been notified of the bankruptcy, and no notice need be given with respect to property exempt from execution.

Notes of Advisory Committee on Rules

Subdivision (*a*). Section 21g of the Act authorizes the recordation of certain papers in real estate records in counties where the bankrupt owns real property, and makes such recordation, when also authorized by state law, a condition of constructive notice of the pendency of the bankruptcy case to bona fide purchasers and lienors of the bankrupt's realty. Section 47c of the Act has imposed a duty on the trustee to record one of these papers, *viz.*, the order approving his bound, within 10 days after his qualification, in every county where the bankrupt owns nonexempt realty. Subdivision (a) of this rule is an adaptation of § 47c but imposes a duty of prompt recordation on a receiver if one is appointed, and on the trustee if there has been no previous recordation The duty may be performed by recordation of a certified copy of any of the 3 papers authorized to be recorded with the effect of constructive notice under § 21g of the Act, but a receiver may be able to record only a copy of the petition and in any event cannot record a copy of the order approving the trustee's bond. The definition of "to record" in § 1(25) of the Act includes "to register or to file for record or registration." The rule excuses recordation in the county in which is kept the record of the proceedings in the case, since, as § 21g recognizes, such record is itself constructive notice of the pendency of the bankruptcy and of the resultant divestment of the bankrupt's title to realty in that county. *In re Kabbage*, 93 F.Supp. 516, 517 (Ref. N.D. Ohio 1950). Recordation is not required in a county where the bankrupt's only interest in real estate may be claimed by him as exempt inasmuch as postbankruptcy transfers of such an interest are not detrimental to the estate. "The word 'county' includes a parish, or any other equivalent subdivision of a State or Territory of the United States." 1. U.S.C. § 2.

Subdivision (*b*). Section 70d of the Act severely restricts the transferability of personal property of the estate after bankruptcy but protects certain good faith transferees Subdivision (b) of this rule, which is new, recognizes the desirability of protecting the estate as well as innocent depositaries, bailees, and other persons holding money and property of the estate subject to withdrawal or order of the bankrupt, against the risk of postbankruptcy transfers. Failure to give the notice required by this subdivision carries no implication that a postbankruptcy transaction is therefore not subject to challenge under § 70d of the Act or is necessarily within the scope of the doctrine of *Bank of Marin v. England*, 385 U.S. 99 (1966). Although debtors on accounts receivable owned by the bankrupt may be protected by § 70d(2) of the Act in respect to postbankruptcy payments under certain circumstances, it would be an onerous burden and often impracticable to require the receiver or trustee immediately after his qualification to notify all such debtors of the bankrupt. The duty of the officer in respect to such property is to exercise reasonable diligence in the discharge of the duties imposed on him by these rules and by orders of the court.

Responsibilities of receiver and trustee. The duties imposed by subdivisions (a) and (b) fall in the first instance on the receiver, if one is appointed, and the trustee is excused to the extent that recordation or notification has already occurred. If a schedule of the bankrupt's property has been filed, it will presumably afford the receiver and the trustee the best source of information as to the places where recordation should be made and the persons to be notified. In any event the receiver and the trustee are required by this rule to exert all reasonable efforts necessary to determine the places where recordation is necessary and the persons entitled to notice in order to discharge their responsibilities under this rule as soon as possible. See generally 1 Collier ¶ 2.28[4] (1968); 2 *id* ¶ 47.08[1] (1964); MacLachlin, *Bankruptcy* §§ 185–86 (1956).

Rule 603. Burden of Proof as to Validity of Post-Bankruptcy Transfer.

Any person asserting the validity of a transfer under 70d of the Act shall have the burden of proof.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is derived from § 70d(5) of the Act.

Rule 604. Accounting by Prior Custodian of Property of the Estate.

(a) Accounting Required.

Any receiver or trustee appointed in proceedings not under the Act, assignee for the benefit of creditors, or agent, required by the Act to deliver property, in his possession or control to the trustee or receiver in bankruptcy, shall promptly file a written report and account with the bankruptcy court with respect to the property of the estate and his administration thereof.

(b) Examination of Administration.

On the filing of the report and account required by subdivision (a) of this rule and after an examination has been made into the superseded administration, the court shall determine the propriety of such administration, including the reasonableness of all disbursements.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule prescribes the procedures to be followed by any person required to deliver property to the trustee or receiver in bankruptcy and to account for his disposition of the property of the bankrupt under §§ 2a(21) and 69d of the Act. See *Emil v. Hanley,* 318 U.S. 515 (1943); *In re Ira Haupt & Co.,* 287 F.Supp. 318, 320–21, 323–24 (S.D.N.Y. 1968), appeal dismissed. 405 F.2d 493 (2d Cir. 1968); and *cf.* § 70a(8) of the Act. The examination under subdivision (b) may be initiated (1) on the application of the custodian required to account under subdivision (a) for an approval of his account and discharge thereon, (2) on motion of, or the filing of an objection to the custodian's account by, the trustee, receiver in bankruptcy, or any other party in interest, or (3) on the court's own initiative. If a contest develops and no receiver or trustee has qualified, a receiver may be appointed pursuant to Rule 201(a)(3). Rule 914 applies to an contested matter arising under this rule.

Rule 605. Money of the Estate: Collection, Deposit, and Disbursement.

(a) Collection of Estate; Conversion to Money.

A trustee shall collect the property of the estate and, with the approval of the court, convert it to money.

(b) Deposits; Interest.

The trustee shall deposit all money received by him in a designated depository, either in a checking account or, if authorized by the court, in an interest-bearing account or deposit.

(c) Withdrawals and Disbursements.

The trustee shall withdraw and disburse money of the estate only by check or other method approved by the court.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (a). This rule collects the provisions in § 47a of the Act that impose duties on the trustee in respect to the collection, liquidation, and distribution of the estate. Subdivision (a) is an adaptation of § 47a(1) but omits reference to the duty to close up the estate expeditiously. The objective of expenditious administration underlies all provisions of these rules, and every officer is obliged to pursue this objective in the performance of duties imposed on him by the rules. See Rule 903.

Subdivision (b) is derived from § 47a(2) of the Act. Designation of a depository is governed by Rule 512. The trustee will ordinarily place the money of an estate in a deposit payable on demand by check in order to permit prompt payment of dividends as required by Rule 308 and to facilitate expeditious administration of the estate. The rule preserves the authority granted in 1963 by the amendment of § 47a(2), 77 Stat. 14, which enables the court to approve the investment of the funds of the estate in interest-bearing accounts and deposits, including renewable time certificates of deposit, whenever it appears that the funds will necessarily be held by the trustee for a substantial period. See Sen. Rept. No. 147 on H.R. 2849, 88th Cong., 1st Sess. 2 (1963). The "interest-bearing savings deposits, time certificates of deposit, or time deposits-open account" referred to in § 47a(2) are all either interest-bearing accounts or deposits within the rule. The trustee's duty under § 47a(3) of the Act to account for all interest received upon funds of the estate is included in the duties prescribed by Rule 218.

Subdivision (c) authorizes the trustee to disburse money of the estate not only by check as permitted by § 47a(4) and General Order 29 but by any other method approved by the court. The provisions of General Order 29 requiring checks to be countersigned by the judge, referee, clerk, or an assistant and particularizing the method of keeping a record of all disbursements are omitted as too rigid and detailed. Mechanisms for payments through bank accounts are subject to technological and other changes and should not be frozen by rules that cannot anticipate these developments. See Dunne, *Variation on a Theme by Parkinson or Some Proposals for the Uniform Commercial Code and the Checkless Society,* 75 Yale L.J. 788 (1966). The rule does not preclude the adoption of local rules of general application within a district, or orders of court for particular cases, prescribing countersignature and record-keeping requirements.

Rule 606. Appraisal and Sale of Property; Compensation and Eligibility of Appraisers and Auctioneers.

(a) Appraiser: Appointment and Duties.

The court shall appoint one or more competent and disinterested appraisers, unless it determines that such appointment is unnecessary. Unless the court directs otherwise, the appraiser or appraisers shall appraise all the property of the estate and shall prepare and file a report of the appraisal with the court.

(b) Conduct of Sale.

(1) *Court Approval.* The property of the estate shall be sold subject to the approval of the court unless the court orders otherwise.

(2) *Public or Private Sale.* All sales shall be by public auction, unless otherwise ordered by the court on application to the court and for good cause shown. Unless it is impracticable, there shall be filed with the court on completion of a sale an itemized statement of the property sold, the name of each purchaser, and the price received for each item or lot or for the property as a whole if sold in bulk. If the property is sold by an auctioneer, he shall file the statement and furnish a copy to the trustee or receiver; otherwise the trustee or receiver shall file the statement.

(3) *Sale Free of Lien or Other Interest.* A proceeding to sell property free of a lien, or of any other interest for which the holder can be compelled to take a money satisfaction, is governed by the rules in Part VII.

(4) *Execution of Instruments*. After a sale in accordance with this subdivision the trustee or receiver, as the case may be, shall execute such instruments as may be necessary or ordered by the court to effectuate the transfer to the purchaser.

(c) Compensation and Eligibility of Auctioneers and Appraisers.

No auctioneer shall be employed or appraiser appointed except upon an order of the court fixing the amount or rate of compensation. No officer or employee of the Judicial Branch of the United States or the United States Department of Justice shall be eligible to act as an auctioneer or appraiser. No residence or licensing requirement shall apply to an auctioneer employed or appraiser appointed under this rule.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is derived from § 70f and g of the Act and General Orders 18 and 45.

Subdivision (a). The first sentence of subdivision (a) of the rule recognizes that the appointment of an appraiser may not always be warranted by a consideration of what is best for the creditors. Although such an appointment is apparently mandatory in every case under § 70f, the rule conforms to the practical construction of the language. See *Robinson v. Howard*, 229 U.S. 54, 64 (1913); *Bragg v. Gerstel*, 148 F.2d 757, 760 (5th Cir. 1945); 4A Collier 1122 n.5 (1967).

Subdivision (b). Paragraph (1) of subdivision (b) recognizes the power of the court to protect the estate against improvident sales by setting a minimum or "upset price" in advance of the sale or by refusing confirmation of a sale at an inadequate price. See 4A Collier, *supra* ¶ 70.98[10]. Paragraph (2) of the subdivision is an adaptation of General Order 18.

Paragraph (3) of subdivision (b) recognizes the adversary character of the proceedings by a trustee in seeking authority to sell property free of liens or of a spouse's interest or of any other interest that can be liquidated by forced sale of the property. If, however, the holder of an admittedly valid lien or other interest amenable to liquidation is fully protected by a deposit in escrow or similar arrangement, the sale may be ordered without the necessity of an adversary proceeding. The authority of the court to sell free of liens rests in case law. See 4A Collier, *supra* ¶ 70.99. The authority to compel the bankrupt's spouse to accept liquidation of her interest was recognized by an amendment of § 2a(7) of the Act in 1938. 1 Collier ¶ 2.45 (1968). If, however, applicable nonbankruptcy law does not compel a spouse to accept a money satisfaction in lieu of her dower interest, the court of bankruptcy does not have the power under § 2a(7) to determine and liquidate the interest. *In re Jones*, 86 F.Supp. 605 (E.D. Mich. (1949). The principle that underlies authority to sell free of liens, including tax liens (*Van Huffel v. Harkelrode*, 284 U.S. 225 (1931)), supports an order to sell free of an interest that is subject to conversion to money without the holder's consent. See *In re Bowling Green Milling Co., Inc.*, 132 F.2d 279, 284 (6th Cir. 1942), approving sale of wheat by a trustee in bankruptcy of a warehouseman free of claims of holders of warehouse receipts who were owners in common of the wheat; *In re Blodgett*, 115 F.Supp. 33 (E.D. Wis. 1953), approving order for sale of real estate owned by a bankrupt and wife as joint tenants where bankruptcy severed the tenancy. Compare *In re A. Roth Co., Inc.*, 118 F.2d 156 (7th Cir. 1941), denying power of the court of bankruptcy to sell free of liens where the bankrupt's interest was only that of a mortgagee; *Petition of Eddy*, 6 F.2d 197, 199 (7th Cir. 1925), refusing to approve a sale by the trustee of property "clear from any lien or other right" of one who was asserting a half interest in the property under a will; *In re Victor*, 218 F.Supp. 218 (S.D. Ill. 1963), denying power in the court of bankruptcy to order sale of property held in cotenancy by the bankrupt and his spouse free of the wife's undivided interest.

The duty imposed on the trustee or receiver by paragraph (4) of subdivision (b) does not derogate from the power of the court of bankruptcy to order third persons to execute instruments of transfer to the purchaser at a sale under this subdivision. See, *e.g., In re Rosenburg*, 138 F.2d 409 (7th Cir. 1943), requiring a passive trustee in a dry trust for the benefit of the bankrupt to execute a conveyance to a purchaser of the bankrupt's property at a sale by the trustee.

Subdivision (c). The first sentence of subdivision (c) of the rule is a revision of General Order 45. Reference to employment of an accountant has been deleted for the reason that Rule 215 deals with this subject matter. The disqualification of personnel of the Judicial Branch and the Department of Justice for employment as auctioneers and appraisers is added as a safeguard against imputations of favoritism which detract from public confidence in bankruptcy administration. The last sentence of subdivision (c) of the rule supersedes the last sentence of § 70f of the Act, which imposes a parochial requirement not warranted by any consideration having to do with sound bankruptcy administration. See MacLachlan, *Bankruptcy* 350 n. 11 (1956).

Rule 607. Assumption, Rejection, and Assignment of Executory Contracts.

Within 30 days after the qualification of the trustee, unless the court for cause shown extends or reduces the time, the trustee shall file a statement showing any executory contracts of the bankrupt, including unexpired leases, which the trustee has assumed. Whenever practicable, the trustee shall obtain approval of the court before he assumes a contract. Any such contract not assumed within 60 days after qualification of the trustee, or within such further or reduced time as the court may allow within such 60-day period, shall be deemed to be rejected. If a trustee does not qualify, any such contract shall be deemed to be rejected at the expiration of 60 days after the date of an order directing that a trustee be not appointed, or at such earlier or later time as the court may fix within such 60-day period. On application by the trustee for authority to assign any contract he has assumed pursuant to this rule, the court shall determine the matter after hearing on notice to the other party to the contract.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is based on provisions in § 70b of the Act. The rule eliminates the Act's alternative mode of fixing the time allowed the trustee for assuming an executory contract by referring exclusively to his date of qualification as the beginning of the time. The second sentence of the rule requiring court approval in advance of an assumption of an executory contract, whenever practicable, is new, but is in accord with case law. *In re Grainger*, 160 Fed. 69, 75 (9th Cir. 1908); *In re Northern Indiana Oil Co.*, 65 F.Supp. 167, 168 (N.D. Ind. 1946); *In re Schilling*, 251 Fed. 966, 969 (N.D. Ohio 1918); 4A Collier 519, 529–31 (1967); MacLachlan, *Bankruptcy* 119 (1956). Under another new provision, Rule 402(4), the court may direct the bankrupt to list executory contracts to facilitate compliance by the trustee with his duties under this rule. The trustee has been allowed 30 days after qualification by § 70b within which to assume or reject executory contracts, and by this rule he is required to file a statement of the contracts he has assumed during this period. The rule, however, postpones the effect of failure to assume as a rejection until 60 days after the trustee's qualification in order to afford creditors an additional opportunity to evaluate the situation in respect to contracts not assumed and to apply to the court for an order approving assumption of any additional contracts that appear to be advantageous to the estate. The rule recognizes, however, that delay of the decision on whether an executory contract should be assumed may be unduly prejudicial to the other party. See *e.g., Samuels v. E. F. Drew & Co.*, 292 Fed. 734, 739 (2d Cir. 1923); Silverstein, *Rejection of Executory Contracts in Bankruptcy and Reorganization*, 31 U. of Chi.L.Rev. 467, 473 (1964). In an appropriate case he may obtain an order reducing the 60-day period ordinarily allowed for exercising the option to assume. See 4A Collier, *supra* at 528. Conversely it may be impracticable for the decision on whether to assume to be made in the 60-day period ordinarily available, and the trustee or a creditor may obtain an extension in an appropriate case. See, *e.g.*, *In re Rochester Shipbuilding Corp.*, 32 F. Supp. 98, 100 (W.D.N.Y. 1940). Under the rule however, the extension must be sought and granted within the 60-day period. Enlargement pursuant to the dispensation allowable generally under Rule 906(b)(2) cannot be had for the purpose of rendering a contract amenable to assumption after it has once been deemed rejected. The fourth sentence of the rule, dealing with the effect of nonassumption when no trustee has qualified, is correlated with the provisions that apply when a trustee fails to elect within the time allowed.

The last clause of § 70b of the Act, which relieves the trustee of liability for breaches of any contract or lease occurring after an assignment to a third person, states a rule of substantive law inappropriate for incorporation into the rules.

Rule 608. Abandonment of Property.

The court may, on application or on its own initiative and after hearing on such notice as it may direct, approve the abandonment of any property and, without reopening the case, may direct the abandonment of any property of inconsequential value discovered after a case is closed. If a case is closed without administration of property of the estate that has been scheduled, the property shall be deemed to have been abandoned with the approval of the court, and on request the court may, without reopening the case, enter an order approving the abandonment.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is new but codifies the preferred practice developed under case law. See 4A Collier ¶ 70.42[3] (1967); MacLachlan, *Bankruptcy* 119–20 (1956). While it is clearly desirable for any abandonment by the trustee to be authorized by an express order of the court, the second sentence of the rule adopts the case law that treats the closing of an estate without administration of scheduled assets as tantamount to an approval of abandonment. *Sparhawk* v. *Yerkes*, 142 U.S. 1 (1891); *In re Malcolm*, 48 F. Supp. 675 (E.D. Ill. 1943); *Beck* v. *Unruh*, 37 Cal. 2d 148, 231 p. 2d 13 (1951). A formal order of approval, which may be necessary to enable the bankrupt to transfer marketable title to realty owned at the time of bankruptcy, is obtainable under the rule without the necessity of reopening the estate. Compare *Saper* v. *Viviani*, 226 F. 2d 608 (2d Cir. 1955); and see MacLachlan, *Bankruptcy* 119, 366 (1956). The rule also provides an effective expeditious, and inexpensive solution for the vexing problem that not infrequently arises when property belonging to the estate is recovered after the case is closed but it is of insufficient value to warrant the reopening of the case. The rule constitutes no limitation on the right of any party in interest to apply for and obtain an order reopening the case pursuant to Rule 515 on a showing that there are valuable assets that the creditors are entitled to have administered for their benefit.

Rule 609. Redemption of Property from Lien or Sale.

On application by the trustee and after hearing on such notice as the court may direct, the court may authorize the redemption of property from a lien or from a sale to enforce a lien in accordance with applicable law.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is a revision of General Order 28 insofar as the general order deals with redemption of property. Ordinarily the secured creditor should be given notice of the trustee's application so that he can raise any objection he may have to the proposed redemption. If he is in possession, however, and raises an objection to the redemption that makes his claim to continued possession more than colorable, the trustee may be required to commence a plenary action. See 4A Collier ¶ 70.991 (1976).

Rule 610. Prosecution and Defense of Proceedings by Trustee or Receiver.

The trustee or receiver may, with or without court approval, prosecute or enter his appearance and defend any pending action or proceeding by or against the bankrupt, or commence and prosecute any action or proceeding in behalf of the estate, before any tribunal.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is derived from subdivisions b, c, and e of § 11 of the Act.

Rule 611. Preservation of Voidable Transfer.

Whenever any transfer is voidable by the trustee, the court may determine, in an adversary proceeding in which are joined persons claiming interests or rights in the property subject to the transfer, whether the transfer shall be avoided only or shall be preserved for the benefit of the estate.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is derived from provisions in §§ 60b, 67a(3), 67c(2), 67d(6), and 70e(2) of the Act. The power to preserve a voidable lien for the benefit of the estate probably inheres in the courts of bankruptcy as a court of equity. *Cf. Jordan v. Hamlett*, 312 F.2d 121, 124 (5th Cir. 1963); *In re Edward Bibinger, Inc.*, 12 App. Div. 2d 237, 239, 210 N.Y.S.2d 319, 321 (1961); Kennedy, *The Trustee in Bankruptcy as a Secured Creditor Under the Uniform Commercial Code*, 65 Mich.L.Rev. 1419, 1438 n.68 (1967). This rule is applicable whenever the question arises whether a transfer should be avoided only or preserved for the benefit of the estate.

All persons claiming interests or rights in the property that may be held subject to the rights of the transferee and thus of the trustee by the order of preservation should be joined as parties in the proceeding governed by this rule. Any person holding an interest superior to that of the transferee and not challenged by the trustee need not be joined in the proceeding since his rights would not be affected by the order of preservation. The holder of such a superior interest should nevertheless be joined as a party to any proceeding in which a sale free of his interest is contemplated, unless the validity and priority of the interest are not in question and the holder is fully protected by the terms of the sale. See Rules 701(3) and 606(b)(3) and the accompanying Notes.

Although §§ 67b(6) and 70e(2) of the Act authorize the preservation of voidable obligations for the benefit of the estate, no instance of the application of either of these preservations has been found in the reported cases. In any event, the determination of the validity and priority of unsecured obligations of the estate is governed by Rule 306.

Rule 612. Proceeding to Avoid Indemnifying Lien or Transfer to Surety.

If a lien voidable under § 67a of the Act has been dissolved by the furnishing of a bond or other obligation and the surety thereon has been indemnified by the transfer of, or the creation of a lien upon, nonexempt property of the bankrupt, the surety shall be joined as a defendant in any proceeding to avoid the indemnifying transfer or lien. Such proceeding is governed by the rules in Part VII. If an order is entered for the recovery of indemnifying property in kind or for the avoidance of an indemnifying lien, the court on motion by any party in interest, shall ascertain the value of such property or lien; if such value is less than the amount for which such property or lien is indemnity, the surety may elect to retain the property or lien on payment of the value so ascertained to the trustee or debtor, as the case may be, within such time as the court shall fix.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is derived from § 67a(2) and (4) of the Act.

PART VII.—ADVERSARY PROCEEDINGS

[*N.b. The numbering of the rules in this Part VII is correlated with the numbering of the Federal Rules of of Civil Procedure.*]

Rule 701. Scope of Rules of Part VII.

The rules of this Part VII govern any proceeding instituted by a party before a bankruptcy judge to (1) recover money or property, other than a proceeding under Rule 220 or Rule 604, (2) determine the validity, priority, or extent of a lien or other interest in property, (3) sell property free of a lien or other interest for which the holder can be compelled to take a money satisfaction, (4) object to or revoke a discharge, (5) obtain an injunction, (6) obtain relief from a stay as provided in Rule 401 or 601, or (7) determine the dischargeability of a debt. Such a proceeding shall be known as an adversary proceeding.

NOTES OF ADVISORY COMMITTEE ON RULES

The rules in Part VII (701 to 782 inclusive) govern the procedural aspects of most of the litigation within the jurisdiction of the court of bankruptcy. The procedure in plenary actions or proceedings, on the other hand, is governed by the Federal Rules of Civil Procedure when brought in United States district courts and by applicable state rules of civil procedure when brought in state courts. Proceedings on a contested petition and to vacate an adjudication are governed by the rules in Part VII to the extent provided by Rule 121. Proceedings to which the rules in Part VII apply directly include those brought to avoid transfers of the bankrupt under §§ 60, 67, and 70 of the Act when plenary actions are unnecessary; reclamation proceedings filed by secured creditors, beneficiaries of trusts, and bailors of property in the custody of the court; proceedings initiated by counterclaims by trustees and receivers for money or property from creditors who have filed claims (Rule 306(c)); proceedings to sell property free of liens and spouses' interests (Rule 606 (b)(3)); proceedings on bonds under §§ 50n and 69b of the Act (Rules 212(f), 512(d), and 925); proceedings to recover excessive dividends under § 57 of the Act; actions by trustees and receivers for recovery of money or property against defendants who consent to trial before referee; proceedings to determine whether discharge should be denied because of an objection grounded on § 14c of the Act (Rule 404) or revoked as provided in § 15 of the Act; proceedings for injunctions under §§ 2a(15), 11a, and 17c(4) of the Act and for relief from stays provided by Rules 401 and 601; and proceedings initiated pursuant to 17c of the Act to determine the dischargeability of particular debts of the bankrupt and to obtain judgments on those not discharged (Rule 409).

If a lienor seeks relief from a stay as provided by Rule 401 or 601, the proceedings are required to be expedited in accordance with the provisions of the applicable rule. *Ex parte* relief against the stay of acts and proceedings to enforce liens prescribed by Rule 601 is governed by subdivision (d) of that rule. Failure of any party to move for reinstatement of a stay pursuant to that subdivision after *ex parte* relief has been granted to the lienor does not bar him from seeking injunctive relief under this rule and Rule 765.

Except as provided in Rules 121 and 914 Part VII does not govern contested proceedings in the court of bankruptcy other than those described in this rule. Thus, proceedings initiated by the filing of an objection to defeat or reduce a claim rather than to seek an affirmative money judgment or recovery of property, and proceedings under Rule 604 to require a prebankruptcy liquidator to account to the court for the disposition of the property of the bankrupt (see, *e.g., In re Ira Haupt & Co.* 287 F. Supp. 318 (S.D.N.Y. 1968), appeal dismissed, 405 F.2d 493 (2d Cir. 1968)) and under Rule 220 to examine and determine the reasonableness of compensation paid or promised by a bankrupt to an attorney at law (see, *e.g., Davis v. Negin*, 357 F.2d 154. 155 (6th Cir. 1966)), are not subject to the rules in Part VII. The procedure for handling most objections to claims and for their reconsideration is prescribed by Rules 306 and 307. The procedure for handling exemptions is prescribed by Rule 403.

Rule 702. Reserved.

Rule 703. Commencement of Adversary Proceeding.

An adversary proceeding is commenced by filing a complaint with the court.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is an adaptation of Rule 3 of the Federal Rules of Civil Procedure. A bankruptcy case is commenced as provided in Rule 101. A claim against the estate is made by filing a proof of claim in accordance with Rule 302. An application for relief against a party, or opposed by a party in interest, which is not otherwise designated by these rules is included in the definition of a "motion" by Rule 901(9). Rule 509 prescribes the manner of filing a complaint as well as other papers with the court.

Rule 704. Process; Service of Summons, Complaint, and Notice of Trial.

(a) Summons and Notice of Trial: Issuance and Form: Service with Complaint.

Upon the commencement of an adversary proceeding the bankruptcy judge shall set a date for trial and shall forthwith issue a summons and notice of trial. The summons and notice shall conform substantially to Official Form No. 26 and shall be served together with the complaint on the defendant in one of the modes authorized by this rule.

(b) Personal Service.

Service of the summons, complaint, and notice of trial may be made as provided in Rule 4(d) of the Federal Rules of Civil Procedure for the service of process. Personal service may be made by any person not less than 18 years of age who is not a party.

(c) Service by Mail.

Service of summons, complaint, and notice of trial may also be made by any form of mail requiring a signed receipt as follows:

(1) Upon an individual other than an infant or incompetent, by mailing a copy of the summons, complaint, and notice to his dwelling house or usual place of abode or to the place where he regularly conducts his business or profession.

(2) Upon an infant or an incompetent person, by mailing a copy of the summons, complaint, and notice to the person upon whom process is prescribed to be served by the law of the state in which service is made when an action is brought against such defendant in the courts of general jurisdiction of that state. The summons, complaint, and notice in such case shall be addressed to the person required to be served at his dwelling house or usual place of abode or at the place where he regularly conducts his business or profession.

(3) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association, by mailing a copy of the summons, complaint, and notice directed to the attention of an officer, a managing or general agent, or to any

other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

(4) Upon the United States, by mailing a copy of the summons, complaint, and notice to the United States attorney for the district in which the action is brought and also to the Attorney General of the United States at Washington, District of Columbia, and in any action attacking the validity of an order of an officer or an agency of the United States not made a party, by also mailing a copy of the summons, complaint, and notice to such officer or agency.

(5) Upon any officer or agency of the United States, by mailing a copy of the summons, complaint, and notice to the United States as prescribed in paragraph (4) of this subdivision and also to the officer or agency. If the agency is a corporation, the mailing shall be as prescribed in paragraph (3) of this subdivision of this rule.

(6) Upon a state or municipal corporation or other governmental organization thereof subject to suit, by mailing a copy of the summons, complaint, and notice to the person or office upon whom process is prescribed to be served by the law of the state in which service is made when an action is brought against such a defendant in the courts of general jurisdiction of that state, or in the absence of the designation of any such person or office by state law, then to the chief executive officer thereof.

(7) Upon a defendant of any class referred to in paragraph (1) or (3) of this subdivision of this rule, it is also sufficient if a copy of the summons, complaint, and notice is mailed to the person upon whom service is prescribed to be served by any statute of the United States or by the law of the state in which service is made when an action is brought against such defendant in the courts of general jurisdiction of that state.

(8) Upon any defendant, it is also sufficient if a copy of the summons, complaint, and notice is mailed to an agent of such defendant authorized by appointment or by law to receive service of process, at his dwelling house or usual place of abode or at the place where he regularly carries on his business or profession and, if the authorization so requires, by mailing also a copy of the summons, complaint, and notice to the defendant as provided in this subdivision.

(d) Service Pursuant to Court Order.

(1) *Service in Accordance with Federal Rule of Civil Procedure 4(e)*. If a party cannot be served as provided in subdivision (b), (c), or (i) of this rule, the court may order the summons, complaint, and notice of trial to be served as provided in Rule 4(e) of the Federal Rules of Civil Procedure for service of summons, notice, or order in lieu of summons.

(2) *Service by Publication*. If a party to an adversary proceeding to determine or protect rights in property in the custody of the court cannot be served as provided in subdivision (b), (c), or (i) of this rule, the court may order the summons, complaint, and notice of trial to be served by mailing copies thereof to the party's last known address, if any, and by at least one publication in such manner and form as the court may direct.

(e) Time of Service.

Service under subdivision (b) shall be made within 3 days after the issuance of the summons. If service is made under subdivision (c), the summons, complaint, and notice of trial shall be deposited in the mail within 3 days after the issuance of the summons. Service under subdivision (d) or (i) shall be made within the time fixed by the court. If a summons is not timely served in accordance with the foregoing provisions, another summons shall be issued and served and a new date set for trial.

(f) Territorial Limits of Effective Service.

(1) The summons, together with the complaint and notice of trial, and all other process except a subpoena may be served anywhere within the United States. "United States," as used in this subdivision, includes the Commonwealth of Puerto Rico and the territories and possessions to which the Act is or may hereafter be applicable.

(2) The summons, together with the complaint and notice of trial, and all other process except a subpoena may be served in a foreign country (A) on the bankrupt, any person required to perform the duties of a bankrupt, any general partner of an adjudicated partnership, or any attorney who is a party to a transaction subject to examination under Rule 220, or (B) on any party to an adversary proceeding to determine or protect rights in property in the custody of the court, or (C) on any person whenever such service is authorized by a federal or state law referred to in Rule 4(d) (7) or Rule 4(e) of the Federal Rules of Civil Procedure.

(3) A subpoena may be served within the territorial limits provided in Rule 45 of the Federal Rules of Civil Procedure.

(g) Proof of Service.

Service of process under the foregoing provisions of this rule shall be proved as provided in Rule 4(g) of the Federal Rules of Civil Procedure. When service is made by mail, the proof shall include the signed receipt or other evidence satisfactory to the court that delivery was made to the addressee or that acceptance was refused by the addressee. Failure to make proof of service does not affect the validity of the service.

(h) Effect of Errors; Amendment.

Service of process under this rule shall be effective notwithstanding an error in the papers served or the manner or proof of service if no material prejudice resulted therefrom to the substantial rights of the party against whom the process issued. Amendment of process of proof of service thereof may be allowed as provided in Rule 4(h) of the Federal Rules of Civil Procedure.

(i) Alternative Provisions for Service in a Foreign Country.

If service of the summons, complaint, and notice of trial or of any process is authorized to be effected upon a party in a foreign country, it may also be made and proved as provided in subdivision (i) of Rule 4 of the Federal Rules of Civil Procedure.

NOTES OF ADVISORY COMMITTEE ON RULES

Rule 704 is an adaptation of Rule 4 of the Federal Rules of Civil Procedure. The latter rule has been applied in contested proceedings in bankruptcy. *Slocum v. Edwards*, 168 F.2d 627, 631 (2d Cir. 1948).

Subdivision (a) of this Bankruptcy Rule, like the corresponding subdivision of the Civil Rule, provides for the issuance of a summons upon the filing of the complaint that commences an advisory proceeding. This rule, however, requires the bankruptcy judge to set a date for trial before issuance of the summons so that notice of the trial date may accompany the summons. The form of the summons and notice of trial is set out in Official Form No. 26, subject to such alteration as may be necessary when, for example, service is made in the manner prescribed by a statute or rule of court pursuant to subdivision (d) of this rule and the statute or rule requires a different form. A mistake in the form used should ordinarily be harmless error amenable to correction by amendment under subdivision (h). See 2 Moore 1001 (1964).

Designation of the date of trial in advance serves an important objective of bankruptcy procedure. As the Supreme Court observed in *Katchen v. Landy*, 382 U.S. 323, 328 (1966), "this Court has long recognized that a chief purpose of the bankruptcy laws is 'to secure a prompt and effectual administration and settlement of the estate of all bankrupts within a limited period.'" Provision for disposition without the delay that is the usual incident of conventional litigation is one of the means chosen to effectuate that purpose. *Id.* at 329. In the typical case the date for the trial should be set not later than 30 days after the filing of the complaint. Such a period accommodates the provision in Rule 712(a) which fixes the time to answer in the usual case as 25 days after issuance of the summons. Unless the defendant interposes a defense or objection which requires several days for trial, or a postponement to enable the parties to prepare for trial, the adversary proceeding can thus be determined within the time normally allowed for the service of the answer to a complaint filed in an ordinary civil action. If the plaintiff amends his complaint or if the defendant serves a motion, counterclaim or cross-claim, the time for filing responsive pleadings is likely to extend beyond 25 days after the issuance of the summons, and the setting of a new date for trial will often be necessary or advisable in such event. Likewise if either party seeks discovery before the date set for trial, it is likely that a new trial date will have to be set. A court setting an early date of trial under this rule should be liberal in granting requests for continuance having a plausible basis. *Boyd v. Glucklich*, 116 Fed. 131, 134 (8th Cir. 1902); Drake, *Contested Matters and Ex Parte Procedure in Bankruptcy*, 19 Mercer L.Rev. 318, 320 (1968). As indicated in the Note accompanying Rule 409, however, the trial of issues presented by a complaint seeking determination of the dischargeability of a debt under that rule will ordinarily be set for a date after the disposition of the question whether the bankrupt is to be granted a discharge. The practice of setting a date for trial in advance of service is nonetheless justifiable as a measure that will expedite the disposition of the major portion of litigation governed by the rules in Part VII. Although the setting of the trial date and issuance of the summons and notice of trial are made duties of the bankruptcy judge, both are ministerial functions delegable under Rule 506 to an assistant.

Subdivision (a) recognizes that service of the summons, complaint, and notice of trial may be made by personal service, by mail, by one of the modes prescribed by Rule 4(i) of the Federal Rules of Civil Procedure when service is to be effected on a party in a foreign country, or, when ordered by the court pursuant to subdivision (d), by publication or one of the modes authorized by Rule 4(e) of the Federal Rules of Civil Procedure.

Subdivision (b). When personal service is the mode employed, subdivision (b) follows Rules 4(i)(1) and 45(c) of the Federal Rules of Civil Procedure in recognizing the eligibility for making such service of any nonparty who is not less than 18 years of age.

Subdivision (c). Service in contested proceedings in bankruptcy cases has usually been effected by mail. See Drake, *Contested Matters and Ex Parte Procedure in Bankruptcy*, 19 Mercer L.Rev. 318, 320 (1968). It is contemplated that most service under this rule will continue to be by mail as explicitly authorized by subdivision (c) because of the resultant savings in time and money. *Cf.* 4 Wright & Miller, *Federal Practice and Procedure—Civil* 564, 591 (1969). Only a mode of mail requiring a signed receipt is authorized to be used in view of the necessity for proof of the service. Subdivision (c) is itself an adaptation of Rule 4(d) of the Federal Rules of Civil Procedure for the purposes of mail service. In serving a corporation or a partnership or other unincorporated association by mail pursuant to paragraph (3) of subdivision (c), it is not necessary for the officer or agent of the defendant to be named in the address so long as the mail is addressed to the defendant's proper address and directed to the attention of the officer or agent by reference to his position or title.

Subdivision (d). Service in the manner permitted by Rule 4(e) of the Federal Rules of Civil Procedure or by publication is authorized by subdivision (d) of this rule but only when personal service, service by mail, or, when the defendant is in a foreign country, service in accordance with Rule 4(i) of the Federal Rules of Civil Procedure cannot be made. Service by publication pursuant to paragraph (2) of this subdivision is further restricted to adversary proceedings to determine or protect rights to property in the custody of the court. The court is authorized by Rule 908 to determine the form and manner of publication in the respects not prescribed by this paragraph.

Subdivision (e). Since the date for trial is set under subdivision (a) before the issuance of the summons and the time allowed for filing responsive pleadings under Rule 712 starts to run with the issuance of the summons, it is imperative that service under the rule be made with dispatch. A 3-day limit is thus generally prescribed for service of the summons after its issuance. When the service is made by mail, the papers to be served must be deposited in the mail within the 3-days period. Insofar as compliance with subdivision (e) is concerned, service by mail is complete upon mailing, as provided in Rule 906(e), but proof of service is governed by subdivision (h) of this rule. When service is made pursuant to subdivision (d) (*i.e.*, in accordance with Federal Rule of Civil Procedure 4(e) or by publication), the court should take into account the mode of service and all the circumstances in fixing the time for making the service.

Subdivision (f)(1). The most important change from prior practice authorized by this rule is the extension of the territorial scope of effective service by paragraph (1) of subdivision (f) to include all of the United States. The power to extend the reach of process in bankruptcy cases has been generally acknowledged. 1 Collier ¶ 2.11[2] (1968); 2 Moore 1293.15 (1967); Note, 89 U. of Pa.L.Rev. 960, 962–63 (1941); *cf. Slocum v. Edwards*, 168 F.2d 627, 631 (2d Cir. 1948). The necessity for service of process beyond district and state boundaries in reorganization proceedings under the Act has been recognized by the Supreme Court in *Ex parte Baldwin*, 291 U.S. 610, 615 (1934), and *Continental Illinois National Bank & Trust Co. v. Chicago, R.I., & Pac. Ry.*, 294 U.S. 648, 682–84 (1935). The power to authorize such service was predicated on the court's jurisdiction of the debtor's property "wherever located." This power was said to entail "[a]s a necessary consequency . . . the power to preserve and safeguard the property for the benefit of the trust estate," including "jurisdiction to enjoin, in a proper case, interferences with the property, and . . . the power to send process to that end for service upon the person to be enjoined wherever they may be found within the United States." *Continental Ill. Nat. Bank & Trust Co. v. Chicago, R.I. & Pac.Ry.*, 294 U.S. at 683. The property in the possession of the bankrupt at the date of the filing of a bankruptcy petition passes into the custody of the court of bankruptcy to no less extent than does the property in the possession of a debtor at the filing of a reorganization petition. MacLachlan, *Bankruptcy* § 194 (1956); 1 Collier, *supra* ¶¶ 2.06, 2.11[1]; 2 *id.* ¶¶ 23.04, 23.05 (1961). The rationale supporting extraterritorial service of process in reorganization proceedings thus applies with equal validity to those in straight bankruptcy. See Mussman & Reisenfeld, *Jurisdiction in Bankruptcy*, 13 Law & Contemp. Prob. 88, 99 (1948). It is to be noted, however, that plenary actions which may be brought in the court of bankruptcy in a reorganization case by virtue of the exclusion of § 23 from Chapter X of the Act, *Williams v. Austrian*, 331 U.S. 642 (1947), do not lie within the jurisdiction of the court in a bankruptcy case, *i.e.*, unless there is consent. Accordingly, such cases as *In re Standard Gas & Electric Co.*, 119 F.2d 658, 663–65 (3d Cir. 1941), sustaining objections to extraterritorial service of process attempted by the trustee in suing on causes of action belonging to the debtor's estate would not be affected by this rule.

Paragraph (1) of subdivision (f) authorizes nationwide service of process other than a subpoena on any party to an adversary proceeding. The rule thus overules such cases as *Gathany v. Bishop*, 177 F. 2d 567, 569 (4th Cir. (1949), insofar as it held or implied that the court of bankruptcy sitting in North Carolina could not enjoin an action in Illinois. Insofar as that case rested on the implications of *Local Loan Co. v. Hunt*, 292 U.S. 234 (1934). it has been overruled by §§ 14f and 17c(4) of the Act. An adversary proceeding may be transferred under Rule 782 to any other district in the interest of justice and for the convenience of the parties and, as pointed out in the Note accompanying that rule, a court should be particularly hospitable to a motion for transfer when the defendant resides or has his principal place of business at a substantial distance from the district where the case is pending. A judgment for the recovery of money or property rendered in the court of bankruptcy may be registered in any other district upon compliance with the procedure authorized by Rule 921(b) and 28 U.S.C. § 1963.

Paragraph (2) of subdivision (f) authorizes service on certain parties in foreign countries. The premise of including the bankrupt and the other persons listed in clause (A) of the paragraph is that the court must have the power to proceed against the bankrupt and the persons associated with him in the manner indicated for the purposes of administering the estate notwithstanding their absence from the country *Cf.* §§ 7a(10) and 10 of the Act: *In re Wood & Henderson*, 210 U.S. 246, 253–54, 257–58 (1908) (holding that re-examination of bankrupt's attorney's fees under § 60d of the Act can be had only by the court administering the estate and that notice by mail to attorneys outside the district sufficed); *Segeman v. United States*, 425 F. 2d 984 (9th Cir. 1970) (sustaining conviction of bankrupts for concealment of assets notwithstanding lack of personal service of process upon them and their presence in Canada during the time the offenses were committed); *Benitev v. Anciana*, 127 F. 2d 121, 125–126 (1st Cir. 1942), cert. denied, 317 U.S. 699 (1943) (involving service on nonresident heir of debtor who died after filing of petition); *Carter v. Whisler*, 275 Fed. 743, 746 (8th Cir. 1921) (involving partnership adjudicated in the District of Montana and an alleged partner residing in Iowa); 1 Collier ¶ 7.16 (1960). Clause (A) would overrule such cases as *Babbit v. Dutcher*, 216 U.S. 102 (1910), insofar as it requires ancillary proceedings against a nonresident president of a corporate bankrupt to turn over corporate records in an adversary proceedings, and *Noll v. Hogdson*, 70 F. 2d 19 (4th Cir. 1934), reversing a turnover order against the president of a corporate bankrupt served by mail on the president's attorney in another state. The validity of service on a party outside the country in order to determine or protect rights in property located in this country has frequently been recognized. *Restatement, Judgments* §§ 32, 34 (1942); Ehrenzweig, *Conflict of Laws* § 26 (1962); 2 Moore 1258, 1297.1 (1964); 4 Wright & Miller, *Federal Practice & Procedures—Civil* 555 (1969); see *In re Granite City Bank*, 137 Fed. 818, 820–22 (8th Cir. 1905). Clause (C) of paragraph (2) adopts the provisions of Rules 4(d)(7) and 4(e) of the Federal Rules of Civil Procedure insofar as they authorize foreign service of process. See generally 2 Moore ¶ 4.45 (2d ed. 1964); 4 Wright & Miller, *Federal Practice and Procedure—Civil* § 1133 (1969). No provision of this rule, of course, extends service of process for the purpose of plenary litigation brought by or against the trustee or the bankrupt.

Paragraph (3) of subdivision (f) is identical to the last sentence of Rule 4(f) of the Federal Rules of Civil Procedure. Bankruptcy Rule 916 provides that Rule 45 of the Federal Rules of Civil Procedure applies in bankruptcy cases with qualifications not relevant here.

Subdivision (g) follows Rule 4(g) of the Federal Rules of Civil Procedure in respect to requiring proof of service, but particularizes the need, when service is made by mail, for a signed receipt or other evidence of delivery or refusal of the mail by the addressee.

Subdivision (h) gives the court the same discretion to allow amendment of process of proof of service as that granted by Rule 4(h) of the Federal Rules of Civil Procedure but also recognizes that insubstantial and nonprejudicial errors occurring in papers served under this rule and in the proof of service may be disregarded. See also Rule 905.

Rule 705. Service and Filing of Pleadings and Other Papers.

(a) Service.

Subdivisions (a), (b), and (c) of Rule 5 of the Federal Rules of Civil Procedure apply in adversary proceedings, but when service of pleadings on parties in default is required by subdivision (a) of that rule, service shall be made in the manner provided for service of summons in Rule 704.

(b) Filing.

All papers after the complaint required to be served upon a party shall be filed with the court not later than the second business day following service.

Notes of Advisory Committee on Rules

Subdivision (a). Subdivisions (a), (b), and (c) of Rule 5 of the Federal Rules of Civil Procedure prescribe the mode of service of parties after the complaint. For the purposes of applying these subdivision in adversary proceedings it is necessary to distinguish between parties to a bankruptcy case, which is initiated by a petition (see Rule 101), and the parties to an adversary proceeding, which is initiated by a complaint (see Rule 703). Parties to a bankruptcy case include not only the petitioners, the bankrupt, and the trustee or receiver but any person who has filed an appearance in the case and creditors who have filed proofs of claim. 2 Moore 1334 (1964). Subdivision (a) of Rule 705 is to be taken to require service only on parties to the adversary proceeding. Economical bankruptcy administration and the need for full exchange of information among the parties in interest are appropriately accommodated thereby. *Ibid.*

Notices to creditors of proceedings not subject to rules in this part are governed by Rule 203. See also Rule 914, prescribing the procedure for contested matters other than adversary proceedings.

Subdivision (b). Rule 509 governs the place and other aspects of filing of papers with the bankruptcy court. Subdivision (b) of Rule 705 supplements Rule 509 by prescribing the time allowed for the filing of papers required to be served in adversary proceedings. The allowable time is subjected to fixed limits rather than left to the "reasonable time" standard of Rule 5(d) of the Federal Rules of Civil Procedure in the interest of expediting the proceedings.

Rule 706. Reserved.

Rule 707. Pleadings Allowed.

Rule 7(a) of the Federal Rules of Civil Procedure applies in adversary proceedings.

Notes of Advisory Committee on Rules

Under this rule the pleadings allowable in adversary proceedings governed by Part VII are those listed in Rule 7(a) of the Federal Rules of Civil Procedure. *Cf. Royal Petroleum Corp v. Smith*, 127 F. 2d 841, 842–43 (2d Cir. 1942); *Zydney v. New York Credit Men's Ass'n*, 113 F. 2d 986, 988 (2d Cir. 1940). The pleadings allowable in connection with the commencement of a bankruptcy case and the formulation of issues in a contested proceeding governed by Part I are a petition and an answer thereto, as provided in Rules 101 and 112. When the Bankruptcy Rules, other than those in Parts I and VII, refer generally to "pleadings," as in Rules 904 and 911, the inclusive definition of Rule 901(10) governs.

Rule 708. General Rules of Pleading.

Rule 8 of the Federal Rules of Civil Procedure, except clause (1) of subdivision (a) thereof, applies in adversary proceedings. All statements in pleadings shall be made subject to the obligations set forth in Rule 911(a).

Notes of Advisory Committee on Rules

The court's jurisdiction of an adversary proceeding may be predicated on consent, which may be implied. 2 Collier ¶ 23.08 (1961); MacLachlan, *Bankruptcy* 206–07 (1956). The caption appropriate for use in an adversary proceeding (see Official Form No. 25) apprises the defendant of the fact that the complaint is filed as a proceeding in a pending bankruptcy case. Accordingly, there is no necessity for the recital of the grounds of jurisdiction as provided in Rule 8(a)(1) of the Federal Rules of Civil Procedure. Objection to the court's jurisdiction is governed by Rule 915.

Except for its requirement of jurisdictional allegations in clause (1) of subdivision (a), Rule 8 of the Federal Rules of Civil Procedure states rules of pleading that are entirely suitable for an adversary proceeding in a bankruptcy case. *Commercial Credit Corp. v. Skutt*, 341 F.2d 177, 179 (8th Cir. 1965); *Royal Petroleum Corp. v. Smith*, 127 F.2d 841, 842–43 (2d Cir. 1942); *Zydney v. New York Credit Men's Ass'n*, 113 F.2d 986, 987–88 (2d Cir. 1940); Yankwich, *The Impact of the Federal Rules of Civil Procedure on Bankruptcy*, 42 Cal.L.Rev. 738, 748 (1954).

Subdivisions (b) and (e)(2) of Rule 8 of the Federal Rules of Civil Procedure subject a pleader who files a general denial or who states his claims alternatively or hypothetically to the obligations set forth in Rule 11 of the Federal Rules of Civil Procedure. Rule 911 prescribes the same obligations for a pleader and his attorney as are imposed by Civil Rule 11 and in addition provides that an attorney's signature on a pleading certifies that it is not interposed for an improper purpose. The obligations imposed by Rule 911 apply to all statements in pleadings served and filed in adversary proceedings.

Rule 709. Pleading Special Matters.

Rule 9 of the Federal Rules of Civil Procedure applies in adversary proceedings.

Notes of Advisory Committee on Rules

The provisions of Rule 9 of the Federal Rules of Civil Procedure are appropriate for application in adversary proceedings. *Cf. In re Freeport Italian Bakery, Inc.*, 340 F.2d 50, 54 (2d Cir. 1965); *Levenson v. B. & M. Furniture Co., Inc.*, 120 F.2d 1009 (2d Cir. 1951).

Rule 710. Form of Pleadings.

Rule 10 of the Federal Rules of Civil Procedure applies in adversary proceedings, except that the caption of each pleading in such a proceeding shall conform substantially to Official Form No. 25.

Notes of Advisory Committee on Rules

Rule 904(b) requires the caption of every paper filed in a bankruptcy case to contain certain elements. Official Form No. 25, which sets out the form for a caption in an adversary proceeding, adds the names and identification of the parties to that proceeding. The second sentence of Rule 10(a) of the Federal Rules of Civil Procedure, made applicable by this rule, prescribes the practice as to the use of names when there are 2 or more parties on one side in an adversary proceeding.

Rule 711. Reserved.

Rule 712. Defenses and Objections.

(a) When Presented.

If a complaint is duly served upon him, a defendant shall serve his answer within 25 days after the issuance of the summons, except when a different time is prescribed by the court. The court shall prescribe the time for service of the answer when service of a complaint is made by publication or upon a party in a foreign country. A party served with a pleading stating a cross-claim against him shall serve an answer thereto within 10 days after the service upon him. The plaintiff shall serve his reply to a counterclaim in the answer within 10 days after service of the answer or, if a reply is ordered by the court, within 10 days after service of the order, unless the order otherwise directs. The United States or an officer or agency thereof shall serve an answer to a complaint within 30 days after the issuance of the summons, and shall serve an answer to a cross-claim, or a reply to a counterclaim, within 30 days after service upon the United States attorney of the pleading in which the claim is asserted. The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the court: (1) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 5 days after notice of the court's action; (2) if the court grants a motion for a more definite statement, the responsive pleading shall be served within 5 days after the service of a more definite statement.

(b) Applicability of Federal Rule of Civil Procedure 12(b)–(h).

Subdivisions (b)–(h) of Rule 12 of the Federal Rules of Civil Procedure apply in adversary proceedings, except that:

(1) if an order granting a motion for a more definite statement is not obeyed within 5 days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just;

(2) a motion made by a party under subdivision (f) to strike a pleading to which no responsive pleading is permitted by these rules must be made within 10 days after service of the pleading upon the party;

(3) the references to Rules 15(a) and 19 in subdivision (h) shall be read as references to Bankruptcy Rules 715 and 719 respectively; and

(4) an objection to the jurisdiction of the court of bankruptcy is governed by Rule 915.

Notes of Advisory Committee on Rules

Subdivision (a). This rule is an adaptation of Rule 12 of the Federal Rules of Civil Procedure. The departures from subdivision (a) of the Civil Rule subserve the objective of expediting the resolution of controversies that arise in the administration of bankrupt estates. The rule thus retains and reinforces the policy expressed in the provision in General Order 37 that authorizes the court to "shorten the limitations of time prescribed [by the Federal Rules of Civil Procedure] so as to expedite hearings." See also *Katchen v. Landy*, 382 U.S. 323, 328 (1966); *Bailey v. Glover*, 88 U.S. (21 Wall.) 342, 346–47 (1874). As pointed out in the Note to Rule 704, the 25-day period allowed the defendant for serving his answer in the typical case enables the court to set a date for trial no more than 30 days after the filing of the complaint and the issuance of the summons. The 25-day period is subject to enlargement or reduction by the court for cause shown as provided in Rule 906, and the date for trial may be advanced or postponed accordingly. *Cf. Melo v. Bailey*, 4 Fed.Rules Serv.2d 6b.31, Case 1. (E.D.Pa. 1960); *Blanton v. Pacific Mutual Life Ins. Co.*, 8 Fed. Rules Serv. 6b.51, Case 1, 4 F.R.D. 200 (W.D.N.C. 1944).

Subdivision (a) of the rule moreover explicitly recognizes, as does Civil Rule 12(a), that the time to be allowed a defendant for service of his answer should be subject to modification by the court when he has been served by publication or in a foreign country. Rule 704 goes beyond Civil Rule 4 in authorizing nationwide service by mail, but it is not contemplated that the 25-day period usually allowed the defendant for service of his answer will warrant the court's intervention to prescribe a longer time. For the purposes of the second sentence of subdivision (a) service by mail is made upon a party in a foreign country when the papers addressed to him there are mailed. See Rule 906(e).

The periods allowed for service of an answer to a cross-claim, of a reply to a counterclaim, and of a responsive pleading by the United States run, as in Rule 12(a) of the Federal Rules of Civil Procedure, from the time of service of the pleading to which the response is being made. The times allowed have been reduced from those prescribed by Civil Rule 12(a), however, in the interest of expediting the trial of adversary proceedings. For the same reason the times allowed for serving responsive pleadings after motions have been served, and for serving a motion to strike when no responsive pleading is permitted, are shorter in this rule than are allowed by Civil Rule 12.

Subdivision (*b*). Rule 12(h)(1) of the Federal Rules of Civil Procedure permits certain defenses to be made by amendment of a responsive pleading if the amendment is one permitted as a matter of course by Rule 15(a) and if the defense has not otherwise been waived. Subdivision (b) of this rule makes Civil Rule 12(h)(1) applicable in adversary proceedings but requires (in clause (3)) a reference to Bankruptcy Rule 715(1) to determine when an amendment of a responsive pleading is permitted as a matter of course in an adversary proceeding.

Rule 12(h)(2) of the Federal Rules of Civil Procedure allows certain defenses, including that of failure to join a party indispensable under Rule 19, to be made in a variety of ways. Subdivision (b) of this rule makes Civil Rule 12(h)(2) applicable in adversary proceedings but requires a reference to Bankruptcy Rule 719 for a determination of what parties must be joined in adversary proceedings.

Rule 12(h)(3) of the Federal Rules of Civil Procedure requires dismissal of an action whenever it appears to the court that it lacks jurisdiction of the subject matter. Under § 2a(7) of the Act, however, failure to interpose objection to the jurisdiction of the court of bankruptcy by a timely motion or answer constitutes consent to jurisdiction of the court over any controversy arising in a proceeding under the Act. The distinctive problems that arise when an objection is made to the jurisdiction of the court of bankruptcy are governed by Bankruptcy Rule 915 rather than Civil Rule 12(h)(3).

Rule 713. Counterclaim and Cross-Claim.

Rule 13 of the Federal Rules of Civil Procedure applies in adversary proceedings, except that (1) subdivision (f) does not apply, (2) a party sued by a trustee or receiver need not state as a counterclaim any claim which he has against the bankrupt, his property, or the estate, (3) when a trustee or receiver fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice so requires, he may by leave of court set up the omitted counterclaim by amendment or by commencing a new adversary proceeding or separate action, and (4) persons other than the original parties to the adversary proceeding my be made parties to a counterclaim or cross-claim in accordance with Rules 719 and 720.

NOTES OF ADVISORY COMMITTEE ON RULES

Rule 13 of the Federal Rules of Civil Procedure has generally been held applicable in bankruptcy cases. *Harris v. Capehart-Farnsworth Corp.*, 225 F.2d 268, 270 (8th Cir. 1955); *In re House of Gus Holder, Inc.*, 91 F.Supp. 841, 844 (D.N.J. 1950); 2 Collier 554 (1961). No case has held, however, that a secured creditor or other party to an adversary proceeding commenced by a trustee or receiver in the court of bankruptcy can be compelled to submit all his claims arising out of the transaction or occurrence that is the subject matter of the trustee's or receiver's claim for determination by that court. Considerations of procedural economy and expedition and the advantages of organic administration of all the affairs of a bankrupt estate by the court of bankruptcy do not warrant compulsion of an adversary party who is not otherwise subject to the court's jurisdiction to file any counterclaim in that court. *Cf. Daniel v. Guaranty Trust Co.*, 285 U.S. 154, 162 (1931).

Excusing an adversary party from being required to state a counterclaim against the bankrupt or his property when he is sued in the court of bankruptcy is consonant with the 1963 amendment of Rule 13(a) of the Federal Rules of Civil Procedure. This amendment relieves a defendant from the compulsion to file a counterclaim in a quasi-in-rem proceeding instituted in a federal court that does not have jurisdiction to render a personal judgment against him. The amendment withdraws the dispensation if the defendant states any counterclaim under Rule 13, but no comparable provision seems warranted in this rule. The adversary party must file his claim in the bankruptcy proceeding if he wishes to receive any distribution. If the proceeding concerns property in the custody of the bankruptcy court on which the adversary party has a lien, the trustee may compel the secured party to accept foreclosure in the bankruptcy court by obtaining an order for sale free of liens. See 4A Collier ¶ 70.99 (1967). The adversary party is bound in any event by the court's determination of all the issues presented by the pleadings and is subject to the operation of the doctrine of res judicata. *Katchen v. Landy*, 382 U.S. 323, 334 (1966); *Schwartz v. Levin & Malin, Inc.*, 111 F. 2d 81 (2d Cir. 1940).

The foregoing considerations afford no comparable justification for excepting the trustee or receiver from the operation of Rule 13 insofar as it requires him to state any compulsory counterclaim he has against a party to an adversary proceeding. See *In re Belmetals Mfg., Co.*, 299 F. Supp. 1290, 1296–97 (N.D. Cal. 1969); *In re House of Gus Holder, Inc.*, 91 F. Supp. 841, 844 (D.N.J. 1950); 2 Collier, *supra* 555. When the trustee or a receiver wishes to assert a claim for money or property under these rules against a creditor-claimant in the court of bankruptcy, he must ordinarily commence an adversary proceeding by filing a complaint. See the Notes to Rules 306 and 701.

An inflexible application of the compulsory counterclaim provisions of Rule 13(a) of the Federal Rules of Civil Procedure against the trustee or receiver, however, may be detrimental to the bankrupt estate, the complainant who may be subject to a possible counterclaim, and the objective of facilitating a just, speedy, and inexpensive determination of adversary proceedings. Thus, if a secured creditor seeks reclamation before or shortly after a trustee has qualified, or if a creditor seeks relief from the stay provided by Rule 401 or 601, the trustee may not have an opportunity to determine whether he has any claim arising out of the transaction or occurrence that is the basis for the complaint. In that circumstance, if the compulsory counterclaim provisions were to be rigidly applied, the only practical course open to him would be to seek an extension of the time for filing his responsive pleading to permit an investigation of possible bases for counterclaims. Clause (3) of the rule protects the trustee or receiver against the risk of losing a claim against an adverse party by failing to plead it as a counterclaim and thereby reduces the likelihood that adversary proceedings against a trustee or receiver will be delayed for the purpose of enabling him to investigate potential counterclaims.

The relief authorized by clause (3) to be afforded the trustee or receiver who belatedly discovers a counterclaim includes permission to institute a new proceeding or action, as may be necessary when the adversary proceeding against the estate may have been terminated. Since a party sued by the trustee or receiver is not subject to any compulsion to file a counterclaim under clause (2) of the rule and since clause (3) authorizes relief that goes beyond that authorized by Rule 13(f) of the Federal Rules of

Civil Procedure, that subdivision of the Civil Rules is not applicable in adversary proceedings.

When a counterclaim or cross-claim filed under this rule requires joinder of other persons as parties in order for the court to reach a complete and just conclusion of the proceeding. Bankruptcy Rule 719 rather than Rule 19 of the Federal Rules of Civil Procedure governs the determination of whether such persons shall be joined. As the Note to Rule 719 points out, the jurisdictional limitations that restrict the joinder of persons in adversary proceedings differ from those that apply in plenary actions governed by the Federal Rules of Civil Procedures. With respect to permissive joinder of parties to a counterclaim or cross-claim. Rule 720 makes all the provisions of Rule 20 of the Federal Rules of Civil Procedure applicable in adversary proceedings. The provision for "bulge service" in Rule 4(f) of the Federal Rules of Civil Procedures is not included in the Bankruptcy Rules. That provision, which permits additional parties to a counterclaim or cross-claim to be served anywhere within the United States but not beyond 100 miles from the place where the action is commenced, is unnecessary in Bankruptcy Rule 704(f), since it authorizes nationwide service of all process other than a subpoena in adversary proceedings.

Rule 714. Third-Party Practice.

Rule 14 in the Federal Rules of Civil Procedure applies in adversary proceedings except as the court otherwise directs. A third-party defendant served under this rule shall make his defenses as provided in Rule 712 and his counterclaims as provided in Rule 713.

NOTES OF ADVISORY COMMITTEE ON RULES

While Rule 14 of the Federal Rules of Civil Procedure does not appear to have been invoked in any reported case involving an adversary proceeding in bankruptcy, it is consonant with § 2a(6) of the Act. Notwithstanding this statutory provision, a person sought to be impleaded in a bankruptcy proceeding may be entitled to object to the jurisdiction of the court of bankruptcy. *In re Baudoutine*, 101 Fed. 574, 575–76 (2d Cir. 1900); *cf. Evarts v. Eloy Gin Corp.*, 204 F.2d 712, 717 (7th Cir.), cert. denied, 346 U.S. 876 (1953): *In re Chakos*, 24 F.2d 482, 485 (7th Cir. 1928). And this rule does not, of course, extend the jurisdiction of the court over a third party proceeding. See Rule 928; *United States v. Sherwood*, 312 U.S. 584, 590 (1941); *Dery v. Wyer*, 265 F.2d 804, 808 (2d Cir. 1959). The court of bankruptcy nevertheless has jurisdiction to determine controversies between third persons as to property in its custody and with the consent of the disputants, controversies between third persons that are necessary to be resolved to permit complete administration of the estate. *Harris v. Avery Brundage Co.*, 305 U.S. 160, 163–64 (1938); *Reconstruction Finance Corp.* v. *Riverview State Bank*, 217 F.2d 455, 459–60 (10th Cir. 1954); *Central States Corp. v. Luther*, 215 F.2d 38, 44–45 (10th Cir. 1954).

Bankruptcy Rule 712, which is an adaptation of Rule 12 of the Federal Rules of Civil Procedure, governs the making of any defense by the third-party defendants so that the same time limits shall apply to the service of responsive pleadings and motions in the third-party proceeding as in the original adversary proceeding between the plaintiff and defendant. Bankruptcy Rule 713 follows Civil Rule 13 in all respects except that no one sued by a trustee or receiver is compelled to assert a counterclaim in an adversary proceeding. The reference to Rule 713 in the second sentence of this rule protects a third-party defendant against the possibility that he will be deemed bound to assert a counterclaim against the trustee or receiver.

The provision for "bulge service" in Rule 4(f) of the Federal Rules of Civil Procedure is not included in the Bankruptcy Rules. That provision, which permits persons brought in as parties pursuant to Civil Rule 14 to be served anywhere within the United States but not beyond 100 miles from the place where the action is commenced, is unnecessary in Bankruptcy Rule 4(f) since it authorizes nationwide service of all process other than a subpoena in adversary proceedings.

Rule 715. Amended and Supplemental Pleadings.

Rule 15 of the Federal Rules of Civil Procedures applies in adversary proceedings except that (1) a pleading to which no responsive pleading is permitted may be amended as a matter of course at any time within 15 days after it is served but before the date set for trial and that (2) a party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 5 days after service of the amended pleading, whichever period may be longer, unless the court otherwise orders.

NOTES OF ADVISORY COMMITTEE ON RULES

The reduction provided by this rule of the time limits prescribed by Rule 15(a) of the Federal Rules of Civil Procedure conforms generally to bankruptcy practice and furthers established policy to expedite bankruptcy proceedings. See *Katchen v. Landy*, 382 U.S. 323, 328–29 (1966); General Order 37, explicitly authorizing the bankruptcy court to shorten the time limits prescribed by the Federal Rules of Civil Procedure so as to expedite hearings. Since Rule 704(a) requires a date to be set for trial before service of the summons and complaint, the condition prescribed by Federal Civil Rule 15(a) on amendment of a pleading to which no response is permitted—*viz.*, that the action not have been placed upon the trial calendar—is inappropriate in this rule. Obviously, however, an amendment as of course must be served before the trial is held.

Rule 716. Pre-Trial Procedure; Formulating Issues.

Rule 16 of the Federal Rules of Civil Procedure applies in adversary proceedings.

NOTES OF ADVISORY COMMITTEE ON RULES

The economies of time and money and greater efficiency in the judicial process attainable by the use of pre-trial procedures should be available to the court in adversary proceedings in bankruptcy cases. See Yankwich, *The Impact of the Federal Rules of Civil Procedure in Bankruptcy*, 42 Cal.L.Rev. 738, 756 (1954). The references to a jury and to a master in Rule 16 of the Federal Rules of Civil Procedure are not likely to be relevant when a referee acts under this rule.

Rule 717. Parties Plaintiff and Defendant; Capacity.

Except as provided in Rules 212(f) and 512(d), Rule 17 of the Federal Rules of Civil Procedure applies in adversary proceedings.

NOTES OF ADVISORY COMMITTEE ON RULES

The exceptions recognize the propriety of bringing a proceeding on a bond of a trustee, receiver, or designated depository in the name of the United States as heretofore authorized by § 50h of the Act. Rule 17 of the Federal Rules of Civil Procedure has been deemed applicable in bankruptcy proceedings. *Prudence-Bonds Corp. v. State Street Trust Co.*, 202 F.2d 555, 560 (2d Cir.), cert. denied, 346 U.S. 835 (1953).

It has been assumed that 28 U.S.C. § 754, to which Civil Rule 17(b)(2) refers, does not apply to receivers appointed in bankruptcy cases. Oglebay, *Some Developments in Bankruptcy Law*, 23 Ref.J. 70, 71–72 (1949). Whereas this section of the Judicial Code confers capacity on a receiver "to sue in any district without ancillary appointment," § 69c of the Act and General Order 51 have contemplated the appointment of an ancillary receiver when it is necessary for a receiver to commence an action or proceeding in a district other than that wherein the bankruptcy case is pending. In view of the abolition of ancillary appointment of receivers by Rule 217, however, there is no reason why the capacity of a receiver in bankruptcy to sue should not be governed by 28 U.S.C. § 754 in accordance with Rule 17(b)(2) of the Federal Rules of Civil Procedure. The applicability to receivers in bankruptcy of 28 U.S.C. § 959(a), to which Civil Rule 17(b)(2) refers and which governs capacity of a receiver to be sued, seems never to have been doubted. *Cf. Thompson v. Texas Mexican Ry.*, 328 U.S. 134, 138–41 (1946); *Vass v. Conron Bros*, 59 F.2d 969 (2d Cir. 1932); *Kennison v. Philadelphia & Reading C. & I. Co.*, 38 F.Supp. 980, 983 (D. Minn. 1940).

Rule 718. Joinder of Claims and Remedies.

Rule 18 of the Federal Rules of Civil Procedure applies in adversary proceedings.

NOTES OF ADVISORY COMMITTEE ON RULES

Subject to jurisdictional limitations, the policy of Rule 18 of the Federal Rules of Civil Procedure to adjust at one time all conflicts between the parties is congenial to adversary proceedings in bankruptcy. 2 Collier ¶ 23.04[2] (1961); Yankwich, *The Impact of the Federal Rules of Civil Procedure on Bankruptcy*, 42 Cal.L.Rev. 738, 750–52, 29 Ref.J. 75, 79 (1955).

As pointed out in the Note accompanying Rule 701, the rules in Part VII, including this Rule 718, do not govern the making of a claim by an unsecured creditor against the estate of the bankrupt. The making of such a claim is governed by the rules in Part III.

Rule 719. Joinder of Persons Needed for Just Determination.

(a) Persons to be Joined if Feasible.

A person who is subject to service of process shall be joined as a party in the proceeding if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the proceeding and is so situated that the disposition of the proceeding in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant, or, in a proper case, an involuntary plaintiff.

(b) Objection to Jurisdiction by Joined Person.

If a person joined under subdivision (a) hereof makes a timely objection as provided in Rule 915 to the jurisdiction of the court to determine issues affecting his interest and the objection is sustained, the court shall dismiss such person from the proceeding or, pursuant to Rule 915(b), transfer the part of the proceeding involving his interest to the civil docket of the district court.

(c) Determination by Court Whenever Joinder or Proceeding with Joined Person Not Feasible.

If a person as described in subdivision (a) hereof cannot be made a party, or if such a person is dismissed or the part of the proceeding involving his interest is transferred pursuant to subdivision (b) hereof, the court shall determine whether in equity and good conscience the proceeding should continue among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the proceeding is dismissed for nonjoinder.

(d) Pleading Reasons for Nonjoinder.

A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in subdivision (a) who are not joined, and the reasons why they are not joined.

(e) Exception of Class Proceedings.

This rule is subject to the provisions of Rule 723.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is an adaptation of Rule 19 of the Federal Rules of Civil Procedure for the purposes of adversary proceedings. The word "determination" appears in the title in lieu of "adjudication" as used in the title of Civil Rule 19 because of the special meaning given the latter word by § 1(2) of the Act.

Subdivision (a). Since joinder of a party can neither deprive the court of the jurisdiction otherwise existing over the subject matter of an adversary proceeding nor render the venue of an adversary proceeding improper, subdivision (a) of the rule omits the language of Rule 19(a) of the Federal Rules of Civil Procedure that refers to these possibilities in ordinary civil litigation in the district courts.

Subdivision (b). A person may, however, be entitled to raise an objection to the jurisdiction of the court of bankruptcy to determine his rights and obligations even though other parties to the proceeding may have no such objection because, for example, they have waived it. See *In re Prima Co.*, 98 F.2d 952, 956–59 (7th Cir. 1938), cert. denied, 305 U.S. 658 (1939). In such a case subdivision (b) governs the disposition of such an objection when it is timely raised. No comparable provision is found in Rule 19 of the Federal Rules of Civil Procedure because the situation does not arise in ordinary civil litigation in the district court.

Subdivision (c) is an adaptation of subdivision (b) of Rule 19 of the Federal Rules of Civil Procedure, making the procedure and considerations appropriate when joinder is not feasible likewise applicable when a jurisdictional objection by a joined party is sustained.

Subdivisions (d) and (e) follow subdivisions (c) and (d) of Rule 19 of the Federal Rules of Civil Procedure.

Rule 720. Permissive Joinder of Parties.

Rule 20 of the Federal Rules of Civil Procedure applies in adversary proceedings.

NOTES OF ADVISORY COMMITTEE ON RULES

Rule 20 of the Federal Rules of Civil Procedure has been deemed applicable in bankruptcy proceedings. *Elias v. Clarke*, 143 F.2d 640, 644 (2d Cir.), cert. denied, 323 U.S. 778 (1944).

Rule 721. Misjoinder and Non-Joinder of Parties.

Rule 21 of the Federal Rules of Civil Procedure applies in adversary proceedings.

NOTES OF ADVISORY COMMITTEE ON RULES

Rule 21 of the Federal Rules of Civil Procedure has been held applicable in proceedings under the Act. *In re Hudik-Ross Co., Inc.*, 198 F.Supp. 695, 697 (S.D.N.Y. 1961). Its second sentence is an elaboration of § 2a(6) of the Act. See 1 Collier ¶ 2.39 (1968). The third sentence of Rule 21 of the Federal Rules of Civil Procedure like Civil Rules 13(i) and 42(b), is "certainly . . . applicable in bankruptcy . . . and, indeed, . . . perhaps more readily available there, since the practice of interlocutory appeals in bankruptcy provides for the complete splitting of the issues upon review, whereas a civil appeal requires generally a final judgment disposing of an entire matter." *Elias v. Clarke*, 143 F.2d 640, 644 (2d Cir.) cert. denied, 323 U.S. 778 (1944).

Rule 722. Interpleader.

Rule 22(1) of the Federal Rules of Civil Procedure applies in adversary proceedings.

NOTES OF ADVISORY COMMITTEE ON RULES

The determination of conflicting claims against particular property is a familiar exercise of the jurisdiction of a court of bankruptcy. *Cf.* Bankruptcy Act § 2a(6); *South Side Atlanta Bank v. Thomasson,* 406 F.2d 407 (5th Cir. 1969); *Nisbet v. Federal Title & Trust Co.,* 229 Fed. 644, 647 (8th Cir. 1915), cert. denied, 241 U.S. 669 (1916). Paragraph (2) of Rule 22 of the Federal Rules of Civil Procedures does not apply in adversary proceedings since it has reference only to a special statutory remedy provided by the Judicial Code when 2 or more claimants are of diverse citizenship. Since process may be served anywhere within the United States under Rule 704(f)(1), the court may afford protection of its jurisdiction and determination under this rule comparable to that provided for statutory interpleader under 28 U.S.C. § 2361.

Rule 723. Class Proceedings.

Rule 23 of the Federal Rules of Civil Procedure applies in adversary proceedings.

Rule 723.1 Derivative Proceedings by Shareholders.

Rule 23.1 of the Federal Rules of Civil Procedure applies in adversary proceedings.

Rule 723.2 Adversary Proceedings Relating to Unincorporated Associations.

Rule 23.2 of the Federal Rules of Civil Procedure applies in adversary proceedings.

Rule 724. Intervention.

Rule 24 of the Federal Rules of Civil Procedure applies in adversary proceedings except that a person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 705.

NOTES OF ADVISORY COMMITTEE ON RULES

The applicability of Rule 24 of the Federal Rules of Civil Procedure to proceedings in bankruptcy is well established, *Securities & Exchange Comm'n v. United States Realty & Improvement Co.,* 310 U.S. 434, 458–60 (1940); *Klein v. Nu-Way Shoe Co.,* 136 F.2d 986, 989 (9th Cir. 1943); *Mutual Life Inc. Co. v. Menin,* 115 F.2d 975, 980 (2d Cir. 1940), cert. denied, 313 U.S. 578 (1941); *Seaboard Terminals Corp. v. Western Maryland Ry. Co.,* 108 F.2d 911, 914 (4th Cir. 1940); *In re Finger Lakes Land Co., Inc.,* 29 F.Supp. 50, 51 (W.D.N.Y. 1939); *cf. In re Bender Body Co.,* 139 F.2d 128, 130 (6th Cir. 1943).

Rule 705 governs the service of all motions upon parties under these rules.

Rule 725. Substitution of Parties.

Subject to the provisions of Rule 221(b), Rule 25 of the Federal Rules of Civil Procedure applies in adversary proceedings, but a motion for substitution under this rule shall be served and filed as provided in Rules 704 and 705.

NOTES OF ADVISORY COMMITTEE ON RULES

Rule 221(b), which provides for automatic substitution of the successor of a trustee or receiver as a party in any pending proceeding without abatement, accords the same treatment to the successor of a trustee or receiver as that given the successor to a public officer by Rule 25(b)(1) of the Federal Rules of Civil Procedure. Federal Civil Rule 25 has been regarded as generally applicable in bankruptcy cases. *Benitez v. Anciani,* 127 F.2d 121, 125 (1st Cir. 1942), cert. denied, 317 U.S. 699 (1943); 2 Collier 93 (1966). Rules 704 and 705 govern the service and filing of all motions under these rules.

Rule 726. General Provisions Governing Discovery.

Rule 26 of the Federal Rules of Civil Procedure applies in adversary proceedings.

NOTES OF ADVISORY COMMITTEE ON RULES

Section 21k of the Act provides that in all bankruptcy proceedings parties in interest are entitled to all the rights and remedies granted by the Federal Rules of Civil Procedure pertaining to discovery. The courts have thus allowed resort to the provisions of Rule 26 to obtain discovery in the course of bankruptcy proceedings. See *Georgia Jewelers, Inc., v. Bulova Watch Co.,* 302 F.2d 362, 367–68 (5th Cir. 1962). But *cf. Berg v. Hoppe,* 352 F.2d 776 (9th Cir. 1965) (C. J. Barnes dissenting), criticized in 34 G.W.L.Rev. 945 (1966). In rejecting an effort by the bankrupt to restrict discovery under Civil Rule 26(b) by reference to decisions construing § 21a of the Act, the court said in *Georgia Jewelers, Inc. v. Bulova Watch Co.,* 302 F.2d at 367:

"Bankruptcy is indeed a specialized branch of law and jurisdiction, but save in those areas still reserved to specialized treatment under General Order 37 . . ., it is otherwise subject to the same approach as other civil litigation. The essence of that system, reflected by the Civil Rules, is that pleadings seldom are now the means by which the claim is to be determined, or notice given to the adversary as to what facts might be asserted. That is the function of discovery."

See generally 2 Collier ¶¶ 21.25[2], 21.34 (1964); *Developments in the Law-Discovery,* 74 Harv.L. Rev. 940, 1069–72 (1961).

Rule 727. Depositions Before Adversary Proceedings or Pending Appeal.

(a) Before Adversary Proceeding.

(1) *Application.* A person who desires to perpetuate his own testimony or that of another person regarding any matter that may be cognizable and relevant in an adversary proceeding may file an application with the court in a pending bankruptcy case. The application shall show: (A) that the applicant expects to be a party to an adversary proceeding but is presently unable to bring it or cause it to be brought; (B) the subject matter of the expected proceeding and the applicant's interest therein; (C) the facts which the applicant desires to establish by the proposed testimony and his reasons for desiring to perpetuate it; (D) the names or a description of the persons he expects will be adverse parties and their addresses so far as known; and (E) the names and addresses of the persons to be examined and the substance of the testimony which he expects to elicit from each. The application shall ask for an order authorizing the applicant to take depositions of the persons to be examined named in the application, for the purpose of perpetuating their testimony.

(2) *Notice and Service.* The applicant shall thereafter serve a notice upon each person named in the application as an expected adverse party, together with a copy of the application, stating that the applicant will apply to the court, at a time and placed named therein, for the order described in the application. At least 20 days before the date of hearing the notice shall be served in the manner provided in Rule 704(b) or (c) for service of summons; but if such service cannot with due diligence be made upon any expected adverse party named in the application, the court may make such order as is just for service by publication or otherwise, and shall appoint, for persons not served in the manner provided in Rule 704(b) or (c), an attorney who shall represent them. If any expected adverse party is a minor or incompetent the provisions of Rule 717 apply.

(3) *Order and Examination.* If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an

order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. The depositions may then be taken in accordance with these rules; and the court may make orders of the character provided for by Rules 734 and 735.

(b) Pending Appeal.

If an appeal has been taken from a judgment of a referee or before the taking of an appeal if the time therefor has not expired, the referee who rendered the judgment may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings before the referee. In such case the party who desires to perpetuate the testimony may make a motion before the referee for leave to take the depositions, upon the same notice and service thereof as if the proceeding were pending before the referee. The motion shall show (1) the names and addresses of the persons to be examined and the substance of the testimony which he expects to elicit from each; (2) the reasons for perpetuating their testimony. If the referee finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, he may make an order allowing the depositions to be taken and may make orders of the character provided for by Rules 734 and 735, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in these rules for depositions taken in proceedings pending before the referee.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is an adaptation of Rule 27 of the Federal Rules of Civil Procedure. The relief it affords is available only in respect of a matter that may be cognizable and relevant in an adversary proceeding in a pending bankruptcy case. See also Rule 914, which provides for the situation in which a person expects to be a party to a contested matter in a bankruptcy case.

This rule does not militate in any way against the availability of Rule 27 of the Federal Rules of Civil Procedure to any person who desires to perpetuate testimony regarding any matter that may be cognizable in a court of the United States when no bankruptcy case is pending. Nor does this rule, any more than Civil Rule 27, limit the power of a court to entertain an action to perpetuate testimony. See 4 Moore ¶ 27.21 (1968).

An application under this rule should be filed with the referee as provided by Rule 509(a). See Rule 102. The referee's jurisdiction to enter orders under this rule is ancillary to his jurisdiction of the adversary proceeding for which the testimony is sought to be perpetuated. See 4 Moore ¶ 27.03 (1968). The time prescribed in subdivision (a)(2) for the service of notice may be shortened in exigent circumstances, as provided in Rule 906(c).

Rule 728. Persons Before Whom Depositions May Be Taken.

Rule 28 of the Federal Rules of Civil Procedure applies in adversary proceedings.

Rule 729. Stipulations Regarding Discovery Procedure.

Rule 29 of the Federal Rules of Civil Procedure applies in adversary proceedings.

Rule 730. Depositions upon Oral Examination.

Rule 30 of the Federal Rules of Civil Procedure applies in adversary proceedings, except that the 30-day period during which leave of court must be obtained under subdivision (a) for the taking of a deposition runs from the issuance of the summons under Rule 704 and that the attendance of witness may be compelled by the use of subpoena as provided in Rule 916.

NOTES OF ADVISORY COMMITTEE ON RULES

For illustrative cases authorizing the taking of depositions in proceedings under the Act see *Mattox* v. *Hertwig*, 315 F.2d 221 (5th Cir. 1963); *In re American Anthracite & Bituminous Coal Corp.*, 22 F.R.D. 504 (S.D.N.Y. 1958); *In re Coronet Metal Products Corp.*, 81 F.Supp. 500 (E.D.N.Y. 1948).

Consistently with the provision governing the time for serving an answer under Rule 712(a), the provision of this rule prescribing the time during which leave must be sought for the taking of a deposition starts the period from the issuance of the summons. Rules 12(a) and 30(a) of the Federal Rules of Civil Procedure start the comparable periods therein prescribed from the time of service upon the defendant. Service of a summons, complaint, and notice of trial under these rules is governed by Rule 704 and conventionally will be made by mail. When service is so made, the summons, complaint, and notice of trial must be deposited in the mail within 3 days after the issuance of the summons in order to be timely under Rule 704(e). As pointed out in the Note accompanying Rule 704, discovery sought before the date originally set for trial is likely to require a new trial date to be fixed.

Rule 916 to which reference is made in the last clause of the rule, makes Rule 45 of the Federal Rules of Civil Procedure applicable in adversary proceedings but authorizes subpoenas to be served in such proceedings to be issued in the name of and under the authority of the bankruptcy judge and eliminates the requirement of a seal.

Rule 731. Deposition upon Written Questions.

Rule 31 of the Federal Rules of Civil Procedure applies in adversary proceedings, except that the attendance of witnesses may be compelled by the use of subpoena as provided in Rule 916.

NOTES OF ADVISORY COMMITTEE ON RULES

Under Rule 31(a) of the Federal Rules of Civil Procedure the service of questions on a party starts the time period allowed him for serving cross, redirect, or recross questions. When, as permitted under these rules, service is made by mail, such time period begins upon the mailing. See the last sentence of Rule 5(b) of the Federal Rules of Civil Procedure, made applicable to adversary proceedings by Rule 705(a). The reference in the last clause of the rule to Rule 916 is explained in the Note to Rule 730.

Rule 732. Use of Depositions in Adversary Proceedings.

Rule 32 of the Federal Rules of Civil Procedure applies in adversary proceedings.

NOTES OF ADVISORY COMMITTEE ON RULES

On the propriety of the use of depositions in contested bankruptcy matters, see Drake, *Contested Matters and Ex Parte Procedure in Bankruptcy*, 19 Mercer L.Rev. 318, 328 (1968).

Rule 733. Interrogatories to Parties.

Rule 33 of the Federal Rules of Civil Procedure applies in adversary proceedings.

NOTES OF ADVISORY COMMITTEE ON RULES

Rule 33 of the Federal Rules of Civil Procedure allows a party on whom interrogatories have been served 30 days after the service within which to serve a copy of his answers and objections. As indicated in the Note accompanying Rule 731, service of interrogatories by mail is complete upon mailing.

Rule 734. Production of Documents and Things and Entry upon Land for Inspection and Other Purposes.

Rule 34 of the Federal Rules of Civil Procedure applies in adversary proceedings.

Notes of Advisory Committee on Rules

Discovery pursuant to Rule 34 of the Federal Rules of Civil Procedure has been allowed in bankruptcy proceedings. *In re Shulund*, 210 F. Supp., 195 (D. Mont. 1962); *cf. Mattox* v. *Hertwig*, 315 F. 2d 221 (5th Cir. 1963). Civil Rule 34 allows a party upon whom is served a request of the kind provided for in the rule a period of time after the service within which to serve a written response. As indicated in the Note accompanying Rule 731, when the request is served by mail, the time period allowed for service of the response starts upon the mailing of the request.

Rule 735. Physical and Mental Examination of Persons.

Rule 35 of the Federal Rules of Civil Procedure applies in adversary proceedings.

Rule 736. Requests for Admission.

Rule 36 of the Federal Rules of Civil Procedure applies in adversary proceedings.

Notes of Advisory Committee on Rules

The applicability of Rule 36 of the Federal Rules of Civil Procedure in bankruptcy proceedings has been sustained. *In re Stein*, 43 F. Supp. 845 (N.D.Ill. 1942): *In re Independent Distillers of Ky.*, 34 F.Supp. 724, 729 (W.D. Ky. 1940). Under Rule 36(a) of the Federal Rules of Civil Procedure a matter is deemed admitted if a party on whom a request for admission is served fails to serve an answer or objection within a prescribed period of time after the service of the request. As indicated in the Note accompanying Rule 731, if the request is served by mail, the time allowed for serving the response starts to run from the mailing of the request.

Rule 737. Failure to Make Discovery: Sanctions.

Rule 37 of the Federal Rules of Civil Procedure applies in adversary proceedings.

Notes of Advisory Committee on Rules

As pointed out in the Note accompanying Rule 114 the cases holding that Rule 37 of the Federal Rules of Civil Procedure is inconsistent with the Act are overruled. These cases include *In re Richard's Discount Jewelers, Inc.*, 303 F.Supp. 517, 518 (S.D.N.Y. 1969); *In re Shulund*, 210 F.Supp. 195, 199–200 (D.Mont. 1962); and *In re Cardinal Service Corp.*, 175 F.Supp. 47 (S.D.N.Y. 1959). Any order entered under this rule treating a failure to obey an order to provide or permit discovery as a contempt of the court in which the adversary proceeding is pending is subject to Rule 920.

Rules 738 to 740. Reserved.

Rule 741. Dismissal of Adversary Proceedings.

Rule 41 of the Federal Rules of Civil Procedure applies in adversary proceedings, except that a complaint objecting to the bankrupt's discharge shall not be dismissed at the plaintiff's instance save upon notice to the trustee and upon order of the court containing such terms and conditions as the court deems proper, and the reference in subdivision (b) of that rule to Rule 19 shall be read as a reference to Rule 719.

Notes of Advisory Committee on Rules

Rule 41 of the Federal Rules of Civil Procedure qualifies its first sentence by a reference to Rule 66 of the Federal Rules. Since the latter rule, which governs the practice in federal equity receiverships, including their dismissal, has no application to adversary proceedings in bankruptcy, 7 Moore 1905 (1955), the reference to Rule 66 in Rule 41 of the Federal Civil Rules has no relevance insofar as Rule 41 applies to adversary proceedings.

Special considerations apply to the dismissal of a complaint objecting to a discharge in view of the hazard that the plaintiff may be induced to dismiss by an advantage given or promised by the bankrupt or someone acting in his interest. The same kind of risk underlies the safeguards embodied in Rule 120 against voluntary dismissal of a bankruptcy case. The courts have generally allowed a creditor to withdraw or abandon his objections to discharge of a bankrupt but have allowed other creditors to be substituted, to introduce evidence, and generally to oppose the discharge as if they had originally filed the objections. 1A Collier paragraph 14.14 (1971). The rule accommodates a continuation of this practice. Notice to other creditors of the plaintiff's motion to dismiss his complaint objecting to discharge will often be appropriate to afford them an opportunity to intervene in the proceeding in order to press objections made in the complaint. See *e.g.* N.D.Ill. Bankr. R. 23(F); E.D.Mich Bankr. R. 13; 19 Ref. J. 57 (1945).

A number of local rules provide that if any party seeks to withdraw or fails to prosecute an objection to the bankrupt's discharge, the bankrupt and his attorney must file an affidavit that they have not promised or given any consideration to effect the withdrawal or failure to prosecute *E.g.*, N.D.Ill. Bankr. R. 23(F); S.D.&E.D.N.Y. Bankr. Rule 17(a) paragraph 8 Other rules require an objector seeking to withdraw to file an affidavit that he has not been promised or given any consideration for his withdrawal. *E.g.*, D.Minn. Bankr. R. 22; E.D.Mich. Bankr. R. 13. Rule 741 contemplates that such a requirement may be imposed s a condition on the dismissal of a complaint objecting to the bankrupt's discharge, either as an exercise of discretion in an individual case or as a matter governed by local rule.

Since the conditions requiring dismissal of an adversary proceeding for failure to join a party differ from those governing the dismissal for such a reason of a civil action in the district court, Rule 719 governs this matter in proceedings under these rules and is the appropriate reference in the yast sentence of Rule 41(d) of the Federal Rules of Civil Procedures when it is applied in adversary proceedings.

The withdrawal of a claim is governed by Rule 305.

Rule 742. Consolidation of Adversary Proceedings; Separate Trials.

Rule 42 of the Federal Rules of Civil Procedure applies in adversary proceedings.

Notes of Advisory Committee on Rules

Rule 42 of the Federal Rules of Civil Procedure has been held applicable in bankruptcy proceedings. *Elias v. Clarke*, 143 F.2d 640, 644 (2d Cir.), cert. denied, 323 U.S. 778 (1944). The right to jury trial referred to in subdivision (b) of that rule is not likely to require recognition in an adversary proceeding in a bankruptcy case. See *Katchen* v. *Landy*, 382 U.S. 323, 336–40 (1966); *Barton* v. *Barbour*, 104 U.S. 126, 133–34 (1881); 2 Collier ¶¶ 19.02, 19.07 (1940). But see Rule 409(c).

Rules 743, 744. Reserved.

Rule 744.1 Determination of Foreign Law.

Rule 44.1 of the Federal Rules of Civil Procedure applies in adversary proceedings.

Rules 745 to 751. Reserved.

Rule 752. Findings by the Court.

(a) Effect.

In all matters tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and the judgment shall be entered pursuant to Rule 921(a). Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under these rules except when, on a motion to dismiss under Rule 741, the court renders a judgment on the merits after a trial on the facts.

(b) Amendment.

Upon motion of a party made not later than 10 days after entry of a judgment the court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial or to alter or amend a judgment pursuant to Rule 923. When findings of fact are made in matters tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made before the court an objection to such findings or has made a motion to amend them or a motion for judgment.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is an adaptation of Rule 52 of the Federal Rules of Civil Procedure. Rule 52 has been frequently applied in adversary proceedings in bankruptcy cases. See, *e.g.*, *In re Woodmar Realty Co.*, 307 F.2d 591, 593 (7th Cir. 1962) (findings of fact regarding secured claim held sufficient to comply with Fed.R. Civ.P. 52(a)); *In re Ulrico Development*, 311 F.Supp. 1393 (D.P.R. 1970) (referee's turnover order reversed for lack of findings of fact).

The reference to the advisory jury in subdivision (a) will rarely be applicable in an adversary proceeding. The judgment of the referee is required by Rule 921(a) to be entered in the referee's docket as provided in Rule 504(a), and if the judgment is that of the district judge, it is required to be entered in the civil docket as provided in Rule 79(a) of the Federal Rules of Civil Procedure. The necessity of findings and conclusions in connection with interlocutory injunctions is not specially mentioned in this rule as it is in Civil Rule 52(a), since the statement of the court's duty in the first sentence seems sufficiently comprehensive to apply to the court's disposition of applications for such relief. The "clearly erroneous" standard for overturning the court's findings appears in substantially identical form in Rule 810, which governs the review of findings of a referee by the district court in any proceeding or matter under these rules. The provision of Rule 52(a) of the Federal Rules of Civil Procedure assimilating the findings of a master, if adopted by the court, to findings by the court applies in bankruptcy cases by virtue of Rule 513.

Rule 753. Reserved.

Rule 754. Judgments; Costs.

(a) Judgments.

Subdivisions (a), (b), and (c) of Rule 54 of the Federal Rules of Civil Procedure apply in adversary proceedings.

(b) Costs.

On one day's notice costs may be taxed and judgment therefor rendered by the court.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (a). Rule 54 of the Federal Rules of Civil Procedure has been deemed generally applicable in bankruptcy cases. *South Falls Corp v. Rochelle*, 329 F.2d 611, 619 (5th Cir. 1964); *In re Manufacturers Trading Corp.*, 194 F.2d 948 (6th Cir. 1952); *In re Industrial Sound Engineering, Inc.*, 230 F.Supp. 154 (E.D.Wis. 1964).

Subdivision (b). Under § 2a(18) of the Act the bankruptcy courts have followed the equity practice of allowing costs to either party as a matter of discretion. 1 Collier, 381–82 (1968). Because of the adverse effect on creditors of imposing costs on a bankrupt estate and the reciprocal equities of those involved in litigation with such an estate, costs have often been denied either party in contested proceedings in bankruptcy cases. Subdivision (b) preserves the traditional approach by leaving the taxation of costs in such proceedings to the court's discretion.

Rule 755. Default.

(a) Entry.

When a judgment is sought against a party in adversary proceedings and such party has, without sufficient excuse, (1) failed to plead or otherwise defend or, (2) having filed a pleading or motion, is not ready to proceed with trial on the day set therefor in accordance with these rules, the court upon request therefor shall enter a judgment by default, except as provided hereinafter. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings as it deems necessary and proper. No judgment by default shall be entered against an infant or incompetent person unless represented in the proceeding by a general guardian, committee, conservator, or other such representative who has appeared therein.

(b) Setting Aside Judgment by Default.

For good cause shown the court may set aside a judgment by default in accordance with Rule 924.

(c) Plaintiffs, Counterclaimants, Cross-Claimants.

The provisions of this rule apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a cross-claim or counterclaim. In all cases a judgment by default is subject to the limitations of Rule 54(c) of the Federal Rules of Civil Procedure.

(d) Judgment Against the United States.

No judgment by default shall be entered against the United States or an officer or agency thereof unless the claimant establishes his claim or right to relief by evidence satisfactory to the court.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is an adaptation of Rule 55 of the Federal Rules of Civil Procedure. The distinction between the entry of a default under subdivision (a) of the Civil Rule and the entry of a judgment by default under subdivision (b) of the Civil Rule and the provisions in the latter subdivision for a 3-day notice of an application for judgment and for a right of trial by jury have all been eliminated from the Bankruptcy Rule as in appropriate and unnecessary in adversary proceedings. No affidavit as to the fact of default or as to the amount due is a prerequisite to the entry of the judgment by default by the court under this rule. There is no right to entry of a judgment by default, however, against a party whose failure to appear or to be ready for trial is sufficiently excused, *e.g.*, because he is in military service. The operation of subdivision (a) of this rule is subject to the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. App. § 501 *et seq.*, in the same way as is Rule 55(b) of the Federal Rules of Civil Procedure. See 6 Moore ¶¶ 55.01[6], 55.04, 55.10[3], 55.13 (1953). The court may withhold entry of a default judgment whenever it deems further investigation or hearings to be necessary. The rules does not contemplate that before entering a judgment by default the court is obliged to make an inquiry into whether the party who has failed to plead or defend or is not ready to proceed with trial has a sufficient excuse or whether the party against whom the judgment by default is requested to be entered is an infant or incompetent person.

Subdivisions (b), (c), and (d) of the rule follow with slight change subdivisions (c), (d), and (e) of Rule 55 of the Federal Rules of Civil Procedure.

Rule 756. Summary Judgment.

Rule 56 of the Federal Rules of Civil Procedure applies in adversary proceedings.

Notes of Advisory Committee on Rules

Rule 56 of the Federal Rules of Civil Procedure has frequently been deemed applicable in contested proceedings in bankruptcy cases. See, *e.g., In re Yellow Transit Freight Lines, Inc.*, 207 F.2d 602, 604 (7th Cir. 1953); *Cohen v. Eleven West 42nd Street, Inc.*, 115 F.2d 531, 532 (2d Cir. 1940); *In re Georgia Jewelers, Inc.*, 219 F. Supp. 386, 390 (Ref., N.D. Ga. 1962), aff'd, 219 F. Supp. 398 (N.D. Ga. 1962); *In re Norwalk Tire & Rubber Co.*, 93 F. Supp. 870, 871 (D. Conn. 1950); Yankwich, *The Impact of the Federal Rules on Bankruptcy*, 42 Cal. L. Rev. 738, 756–58 (1954), 29 Ref. J. 75, 81 (1955). As recognized in the Note accompanying Rule 704, a motion filed under this rule will typically require the setting of a new date for trial.

Rules 757 to 761. Reserved.

Rule 762. Stay of Proceedings to Enforce a Judgment.

Subject to the provisions of Rule 805, Rule 62 of the Federal Rules of Civil Procedure applies in adversary proceedings.

Notes of Advisory Committee on Rules

Section 39c of the Act vests discretion in the referee in respect to the suspension of the execution or enforcement of any referee's order that is being reviewed and Rule 805 explicitly retains this discretion. Rule 62(d) of the Federal Rules of Civil Procedure, however, apparently gives an appellant a stay as of right on the filing of a supersedeas bond, but the bond must be approved by the court. 7 Moore ¶62.06 (1954). Although the courts have found no conflict between the provisions of Rule 62 of the Federal Rules of Civil Procedure and the Act, 2 Collier ¶ 25.12 (1960), the qualifying refence to Rule 805 at the beginning of this rule removes any doubt as to the continuing authority of the referee in respect to the stay of proceedings pending an appeal to the district court.

Rule 763. Reserved.

Rule 764. Seizure of Person or Property.

Rule 64 of the Federal Rules of Civil Procedure applies in adversary proceedings except that an adversary proceeding in which any of the remedies referred to in that rule is used shall be commenced and prosecuted pursuant to these rules.

Notes of Advisory Committee on Rules

It has been held that Rule 64 of the Federal Rules of Civil Procedure does not "purport to enlarge the powers of a referee beyond those conferred upon him by the Bankruptcy Act" so as to enable him to issue an order of execution to reach the beneficial right of the bankrupt to trust income when the trustee was not subject to the court's jurisdiction, *Thummess v. Von Hoffman*, 109 F.2d 293, 296 (3d Cir. 1940). This rule is subject to the same limitation.

Rule 765. Injunctions.

Rule 65 of the Federal Rules of Civil Procedure applies in adversary proceedings except that a temporary restraining order or preliminary injunction may be issued on application of a trustee, receiver, or bankrupt without compliance with subdivision (c) of that rule. When security is required under subdivision (c) of that rule and is given in the form of a bond or other undertaking, Rule 925 governs its enforcement against the surety thereon.

Notes of Advisory Committee on Rules

This rule authorizes the court to relieve the trustee or receiver of the security requirement of Rule 65(c) of the Federal Rules of Civil Procedure. It thus does not go so far as *In re Lustron Corp.*, 184 F.2d 789, 797 (7th Cir. 1950), cert. denied, 340 U.S. 946 (1951), and *In re Hudzinski*, 85 F.Supp. 341, 342 (W.D.Pa. 1949), both of which apparently deny applicability of subdivisions (b) and (c) of Rule 65 in adversary proceedings in a bankruptcy case on the ground of incompatibility with the exigencies of bankruptcy administration. *Cf. Magidson v. Duggan*, 180 F.2d 473, 479 (8th Cir.), cert. denied, 339 U.S. 965 (1950), denying applicability of Fed. R. Civ. P. 65(c) to issuance of temporary and permanent injunctions in a plenary action within the reorganzation court's jurisdiction under §§ 2a(7), 102 and 115 of the Act; *In re J.S. Gissel & Co.*, 238 F.Supp. 130 (S.D. Tex. 1965), denying applicability of Fed. R. Civ. P. 65(c) to an injunction by the court in a Chapter X case against a proceeding in admiralty to foreclose a preferred mortgage.

The stays provided by Rules 401 and 601 are not subject to this Rule 765, nor is relief available under this rule limited by Rule 401 or Rule 601.

Rule 766. Reserved.

Rule 767. Deposit in Court.

Rule 67 of the Federal Rules of Civil Procedure applies in adversary proceedings.

Notes of Advisory Committee on Rules

This rule does not deal with the deposit of money of bankrupt estates but with the deposit of money or property in an adversary proceeding wherein a party seeks recovery of money or property. See *e.g., O'Dell v. United States*, 326 F.2d 451 (10th Cir. 1964); *cf. In re Casco Chemical Co.*, 335 F.2d 645, 648–49 (5th Cir. 1964). The rule contemplates that the money shall be deposited by the clerk in a designated depository in the name and to the credit of the court, subject to withdrawal only on order of the court. See 7 Moore ¶ 67.02 (1954). The deposit of money of bankrupt estates is governed by Rules 310, 512, and 605.

Rule 768. Offer of Judgment.

Rule 68 of the Federal Rules of Civil Procedures applies in adversary proceedings.

Rule 769. Execution.

Rule 69 of the Federal Rules of Civil Procedure applies in adversary proceedings.

Notes of Advisory Committee on Rules

The applicability of Rule 69 of the Federal Rules of Civil Procedure to the collection of a judgment rendered in summary proceedings under the Act was recognized in *Governor Clinton Co. v. Knott*, 120 F.2d 149 (2d Cir.), cert. dismissed per stipulation, 314 U.S. 701 (1941), *Cf.* MacLachlan, *Bankruptcy* 215 (1956).

Rule 770. Judgment for Specific Acts; Vesting Title.

If a judgment directs a party to execute a transfer or to deliver a document or to perform any other specific act and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done has like effect as if done by the party. On application of the party entitled to performance the court shall issue a writ of attachment or sequestration against the property of the disobedient parts to compel obedience to the judgment. In proper cases the disobedient party may also be held in contempt in proceedings under Rule 920. The court in lieu of directing a transfer of real or personal property may enter a judgment divesting the title of any party thereto and vesting it in others and such judgment has the effect of a transfer executed in due form of law. When any judgment is for the delivery of possession, the party in whose favor it is entered is entitled to a writ of execution or assistance upon application to the court.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is an adaptation of Rule 70 of the Federal Rules of Civil Procedure.

Rule 771. Process in Behalf of and Against Persons not Parties.

Rule 71 of the Federal Rules of Civil Procedure applies in adversary proceedings.

Rules 772 to 781. Reserved.

Rule 782. Transfer of Adversary Proceeding.

Upon notice and hearing afforded the parties, any adversary proceeding may, in the interest of justice and for the convenience of the parties, be transferred by the court to any other district and shall thereafter continue as if originally filed in such district. An adversary proceeding transferred under this rule shall be referred to a referee by the clerk of the court to which it has been transferred.

NOTES OF ADVISORY COMMITTEE ON RULES

The court to which an adversary proceeding is transferred pursuant to this rule may determine the controversy in the exercise of ancillary jurisdiction conferred by § 2a(20) of the Act. Rule 116(c), which is derived from § 32b and c of the Bankruptcy Act, authorizes transfer of an entire bankruptcy case to another district. This rule recognizes that sound judicial administration may involve the exercise of the same power in a lesser magnitude by authorizing transfer of only a severable part of a case, *viz.*, an adversary proceeding, to another district. In view of the extension of the territorial limits of effective service by Rule 704(f), it behooves courts of bankruptcy to accord a liberal construction to this Rule 782 in order to minimize hardship to parties served in a part of the country remote from the district where the court of bankruptcy is sitting. An order transferring or retaining a case under § 32 of the Act is reviewable on appeal. *L.F. Popell Co., Inc. v. Delta Airlines, Inc.*, 323 F.2d 50, 51 (2d Cir. 1963) (appeal from order or transfer); *In re SOS Sheet Metal Co.*, 297 F.2d 32 (2d Cir. 1961) (appeal from order retaining case). An order transferring or retaining an adversary proceeding under this rule should likewise be reviewable by appeal.

PART VIII.—APPEAL TO DISTRICT COURT

Rule 801. Manner of Taking Appeal.

An appeal from a judgment or order of a referee to a district court shall be taken by filing a notice of appeal with the referee within the time allowed by Rule 802. Failure of an appellant to take any step other than that specified in the first sentence does not affect the validity of the appeal, but is ground only for such action as the district court deems appropriate, which may include dismissal of appeal. The notice of appeal shall conform substantially to Official Form No. 28, shall contain the names of all parties to the judgment or order appealed from and the names and addresses of their respective attorneys, and shall be accompanied by the fee fixed by the Judicial Conference of the United States pursuant to § 40c of the Act. Each appellant shall file a sufficient number of copies of the notice of appeal to enable the referee to comply promptly with Rule 804.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is an adaptation of Rule 3 (a) and (c) of the Federal Rules of Appellate Procedure for the purpose of prescribing the procedure governing appeals from the referee to the district court. The procedure governing appeals from judgments of the district judge entered when he is acting as a bankruptcy judge as well as when he is acting on an appeal from a referee is governed by the Federal Rules of Appellate Procedure.

Rule 802. Time for Filing Notice of Appeal.

(a) Ten-Day Period.

The notice of appeal shall be filed with the referee within 10 days of the date of the entry of the judgment or order appealed from. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 10 days of the date on which the first notice of appeal was filed, or within the time otherwise prescribed by this rule, whichever period last expires.

(b) Effect of Motion on Time for Appeal.

The running of the time for filing a notice of appeal is terminated as to all parties by a timely motion filed with the referee by any party pursuant to the rules hereafter enumerated in this subdivision. The full time for appeal fixed by this rule commences to run and is to be computed from the entry of any of the following orders made upon a timely motion under such rules: (1) granting or denying a motion for judgment notwithstanding the verdict under Rule 115(b)(4); (2) granting or denying a motion under Rule 752(b) to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; (3) granting or denying a motion under Rule 923 to alter or amend the judgment; or (4) denying a motion for a new trial under Rule 923.

(c) Extension of Time for Appeal.

The referee may extend the time for filing the notice of appeal by any party for a period not to exceed 20 days from the expiration of the time otherwise prescribed by this rule. A request to extend the time for filing a notice of appeal must be made before such time has expired, except that a request made after the expiration of such time may be granted upon a showing of excusable neglect if the judgment or order does not authorize the sale of any property.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is an adaptation of Rule 4(a) of the Federal Rules of Appellate Procedure. The rule retains the initial 10-day limit now prescribed by § 39c of the Act for seeking review of a referee's judgment or order. Whereas § 39c, however, allows the court to extend the time for the filing of a petition for review without limit so long as the request for extension is itself timely, this rule, in subdivision (c), places an outer limit of 20 days on any extension. If no motion of the kind contemplated in subdivision (b) and no request for an extension in accordance with subdivision (c) is filed, the time for appeal from a referee's judgment or order expires 10 days after its entry, and it becomes final as provided in Rule 803. Rule 906(b), like Rule 26(b) of the Federal Rules of Appellate Procedure, prohibits the enlargement of the time for filing a notice of appeal.

Motions that will terminate the running of the time for filing a notice of appeal under subdivision (b) are analogous to those which will terminate the runnig of the appeal time under Rule 4(a) of the Federal Rules of Appellate Procedure. In order to be timely a motion, with a single exception, must be filed not later than 10 days after entry of the judgment or order appealed from. The exception involves a motion for judgment under Rule 50(b) of the Federal Rules of Civil Procedure after discharge of the jury, in which case the 10-day period runs from the date of such discharge. Such a motion would be made in a bankruptcy case only in a proceeding on a contested petition or a proceeding on a complaint filed under Rule 409. Rule 50(b) of the Federal Rules of Civil Procedure is made applicable to these proceedings by Bankruptcy Rules 115 (b)(4) and 409(c) respectively.

When the judgment or order appealed from authorizes the sale of property, it becomes final 10 days after its entry unless within the 10-day period a motion terminating the running of the appeal time or a request for extension is filed. This result, required by the second sentence of subdivision (c), preserves the objective of the amendment of § 39c of the Act in 1960 to eliminate the uncertainty as to the title to property authorized to be sold by a referee's order, once 10 days have passed without an appeal or any request or motion extending the period of vulnerability. If such a motion or request is filed within the 10-day period, the other provisions of this rule apply to a judgment or order authorizing the sale of property as they do to any other judgment or order of the referee.

A request for an extension of the time for filing a notice of appeal from a referee's judgment or order not authorizing the sale of property may be filed after the expiration of the 10-day period following its entry or the entry of an order disposing of a motion as provided in subdivision (b), but the extension may be granted on such a request only on a showing that the delay was due to excusable neglect. Moreover, any allowable extension cannot exceed the 20-day limitation prescribed by the first sentence of subdivision (c). Thus the maximum time allowable under this rule for filing an appeal is 30 days after the entry of the judgment or order appealed from or 30 days from the entry of an order disposing of a motion that terminates the runnig of the time for filing an appeal as provided in subdivision (b).

Rule 803. Finality of Referee's Judgment or Order.

Unless a notice of appeal is filed as prescribed by Rules 801 and 802, the judgment or order of the referee shall become final.

Notes of Advisory Committee on Rules

This rule preserves the finality of a referee's order on the expiration of the period allowed for seeking review, as now provided in § 39c of the Act.

Rule 804. Service of the Notice of Appeal.

The referee shall serve notice of the filing of a notice of appeal by mailing a copy thereof to counsel of record of each party other than the appellant or, if a party is not represented by counsel, to the party at his last known address. Failure to serve notice shall not affect the validity of the appeal. The referee shall note on each copy served the date of the filing of the notice of appeal and shall note in the docket the names of the parties to whom he mails copies and the date of the mailing.

Notes of Advisory Committee on Rules

This rule is an adaptation of the provisions of Rule 3(d) of the Federal Rules of Appellate Procedure. The duties imposed by this rule on the referee are delegable to an assistant as provided in Rule 506.

Rule 805. Stay Pending Appeal.

A motion for a stay of the judgment or order of a referee, for approval of a supersedeas bond, or for other relief pending appeal must ordinarily be made in the first instance to the referee. Notwithstanding Rule 762 but subject to the power of the district court reserved hereinafter, the referee may suspend or order the continuation of proceedings or make any other appropriate order during the pendency of an appeal upon such terms as will protect the rights of all parties in interest. A motion for such relief, or for modification or termination of relief granted by the referee, may be made to the district court, but the motion shall show why the relief, modification, or termination was not obtained from the referee. The district court may condition the relief it grants under this rule upon the filing of a bond or other appropriate security with the referee. A trustee or receiver may be required to give a supersedeas bond or other appropriate security in order to obtain a stay when taking an appeal.

Notes of Advisory Committee on Rules

The first, third, and fourth sentences of this rule are an adaptation of Rule 8(a) and (b) of the Federal Rules of Appellate Procedure. The second sentence of the rule retains the discretion vested by § 39c of the Act in the referee respecting the stay or continuation of proceedings pending an appeal from his order. See *George Jewelers, Inc. v. Bulova Watch Co.*, 302 F.2d 362, 370 (5th Cir. 1962); *In re Home Discount Co.*, 147 Fed. 538, 554 (N.D.Ala. 1906). The last sentence of the rule eliminates doubt created by § 25b of the Act. This section has been held not to excuse a trustee from giving a bond if supersedeas is desired. *Quinn v. Gardner*, 32 F.2d 772, 773 (8th Cir. 1929); *Pacific Casualty Co. v. Harvey*, 250 Fed. 952, 954 (9th Cir. 1918). But see Hunt, *Appeals in Bankruptcy*, 10 So. Cal.L.Rev. 296, 304 (1937); 2 Collier ¶ 39.26 n.23 (1968).

Rule 806. Record and Issues on Appeal.

Within 10 days after filing the notice of appeal the appellant shall file with the referee and serve on the appellee a designation of the contents for inclusion in the record on appeal and a statement of the issues he intends to present on the appeal. The record shall include the contents so designated and the findings of fact, conclusions of law, and orders entered thereon. If the appellee deems any other papers to be necessary, he shall, within 7 days after the service of the statement of the appellant, file and serve on the appellant a designation of additional papers to be included. If the record designated by any party includes a transcript of any proceeding or a part thereof, he shall immediately after the designation order the transcript and make satisfactory arrangements for payment of its costs. All parties shall take any other action necessary to enable the referee to assemble and transmit the record.

Notes of Advisory Committee on Rules

This rule is an adaptation of Rule 10(b) of the Federal Rules of Appellate Procedure. The last sentence of the rule is a revision of a sentence taken from Rule 11(a) of the Federal Rules of Appellate Procedure.

Rule 807. Transmission of the Record; Docketing of the Appeal.

The record on appeal shall be transmitted by the referee to the clerk of the district court within 30 days after the filing of the statement of the issues unless a different time is prescribed by order of the district court, and the clerk shall thereupon enter the appeal on the docket.

Notes of Advisory Committee on Rules

This rule is derived from Rules 11(a) and 12(a) of the Federal Rules of Appellate Procedure. The time allowed the referee for transmission of the record is shorter than the corresponding period prescribed by Appellate Rule 11(a) in recognition of the need for expedition in bankruptcy cases, but the time runs from the filing of the statement of the issues rather than the filing of the notice of appeal so that delay in receipt of the statement will not prejudice the referee in complying with his duty under this rule.

Rule 808. Filing and Service of Briefs.

Unless a local rule or court order excuses the filing of briefs or provides for different time limits:

(1) The appellant shall serve and file his brief within 15 days after the entry of the appeal on the docket pursuant to Rule 807.

(2) The appellee shall serve and file his brief within 15 days after service of the brief of the appellant.

(3) The appellant may serve and file a reply brief within 5 days after service of the brief of the appellee.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is adapted from Rule 31(a) of the Federal Rules of Appellate Procedure. The introductory clause of the rule recognizes the desirability of allowing local and individual variations in respect to the filing of briefs, and the numbered clauses prescribe shorter periods than the corresponding intervals allowed by Appellate Rule 31(a).

Rule 809. Oral Argument.

Unless otherwise provided by local rule or court order the parties shall be given an opportunity to be heard on oral argument.

NOTES OF ADVISORY COMMITTEE ON RULES

In lieu of detailed provisions governing oral argument comparable to Rule 34 of the Federal Rules of Appellate Procedure, this rule provides the parties in general terms and opportunity to be heard on oral argument but subject to control by the court.

Rule 810. Disposition of Appeal; Weight Accorded Referee's Findings.

Upon an appeal the district court may affirm, modify, or reverse a referee's judgment or order, or remand with instructions for further proceedings. The court shall accept the referee's findings of fact unless they are clearly erroneous, and shall give due regard to the opportunity of the referee to judge of the credibility of the witnesses.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is a revision of General Order 47, which courts have applied when reviewing referees' orders under § 39c of the Act. *Potuek v. Cordeleria Lourdes*, 310 F.2d 527, 530 (10th Cir. 1962); cert. denied, 372 U.S. 930 (1963); *Allen v. Lokey*, 307 F.2d 353, 354 (5th Cir. 1962); *Mazer v. United States*, 298 F.2d 579, 581–82 (7th Cir. 1962). The rule defines the judge's authority in disposing of judgments, orders, and findings on review in conformity with § 2a(10) of the Act and requires the safe effect to be given the referee's findings as Rule 52(a) of the Federal Rules of Civil Procedure accords the findings of the trial court, *Gross v. Fidelity & Deposit Co. of Md.* 302 F.2d 338, (8th Cir. 1962); *Simon v. Agar*, 299 F.2d 853 (2d Cir. 1962). The same standard is prescribed by Rules 752(a) and 914, which govern the review of findings of fact in adversary proceedings and contested matters in bankruptcy cases, whether such findings are made by a referee or district judge. This rule is not subject to suspension or modification by local rule or order. See Rule 814. The rule does not retain the provision of General Order 47 authorizing receipt of further evidence by the district judge in connection with a review of a referee's order or findings. See 2 Collier ¶ 39.28 (1968).

Rule 811. Costs.

Except as otherwise provided by law, agreed to by the parties, or ordered by the court, costs shall be taxed against the losing party on an appeal; if a judgment is affirmed or reversed in part, or is vacated, costs shall be allowed only as ordered by the court. Costs incurred in the preparation and transmission of the record, the cost of the reporter's transcript, if necessary for the determination of the appeal, the premiums paid for cost of supersedeas bonds or other bonds to preserve rights pending appeal, and the fee for filing the notice of appeal shall be taxed by the referee as costs of the appeal in favor of the party entitled to costs under this rule.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is an adaptation of Rule 39 (a) and (e) of the Federal Rules of Appellate Procedure.

Rule 812. Motion for Rehearing.

Unless otherwise provided by local rule or court order, a motion for rehearing may be filed within 10 days after entry of the judgment of the district court.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is an adaptation of the first sentence of Rule 40(a) of the Federal Rules of Appellate Procedures. The filing of a motion for rehearing pursuant to this rule does not terminate the running of the time for filing a notice of appeal from the district court to the court of appeals. See Rule 4(a) of the Federal Rules of Appellate Procedure.

Rule 813. Duties of Clerk on Disposition of Appeal.

Immediately upon the entry of an order or judgment the clerk of the district court shall serve a notice of the entry by mail upon each party to the appeal, together with a copy of any opinion respecting the order or judgment, and shall make a note of the mailing in the docket. Original papers transmitted as the record on appeal shall be returned to the referee upon disposition of the appeal.

NOTES OF ADVISORY COMMITTEE ON RULES

The first sentence of this rule is substantially identical to the first sentence of Rule 45(c) of the Federal Rules of Appellate Procedure. The second sentence is an adaptation of the next to the last sentence of Rule 45(d) of the Federal Rules of Appellate Procedure.

The duties of the clerk of the district court in respect to the keeping of records of cases appealed from the referee to the district court are as prescribed by the Director of the Administrative Office of the United States Court pursuant to Rule 507.

Rule 814. Suspension of Rules in Part VIII.

In the interest of expediting decision or for other good cause, the district court may, by local rule or order, suspend the requirements or provisions of the rules in Part VIII, except Rules 801, 802, 803, and 810, and may also order proceedings in accordance with its direction.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is an adaptation of Rule 2 of the Federal Rules of Appellate Procedure, but it recognizes that the district court may prescribe a procedure for appeals from referees by local rules or may order the suspension of one or more provisions or requirements of Rules 804, 805, 806, 807, 808, 809, 811, 812, and 813 for a particular appeal. An existing local rule may continue to govern the filing and service of briefs, oral argument, and motion for rehearing, as provided in Rules 808, 809, and 812, but the other rules listed in the preceding sentence can be suspended only by a rule adopted or order made after these rules become effective. The court may make an order of suspension on application or motion of a party or on its own initiative. Neither a local rule nor an order in an individual instance can contravene the requirements of Rules 801, 802, 803, and 810. Subject to this limitation the district court may by local rule or order direct that the provisions of one or more of the Federal Rules of Appellate Procedure shall be followed.

PART IX.—GENERAL PROVISIONS

Rule 901. General Definitions.

The definitions of words and phrases in § 1 of the Act govern their use in these rules to the extent they are not inconsistent with the rules. In addition, the following words and phrases used in these rules have the meanings herein indicated unless they are inconsistent with the context:

(1) "Accountant" includes an accounting partnership or corporation.

(2) "Act" means the Bankruptcy Act.

(3) "Affiliate" of a bankrupt means (A) a corporation 25 per cent of more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the bankrupt, or (B) a person who directly or indirectly owns, controls, or holds with power to vote, 25 per cent or more of the outstanding voting securities of the bankrupt, or (C) a corporation 25 per cent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by a person who directly or indirectly owns, controls, or holds with power to vote, 25 per cent or more of the outstanding voting securities of the bankrupt, or (D) a person substantially all of whose property is operated under lease or operating agreement by the bankrupt, or (E) a person who operates under lease or operating agreement substantially all of the property of the bankrupt.

(4) "Application" includes any request to the court for relief that is not a pleading or proof of claim. An application not made in open court shall be in writing unless a writing is excused by the court. An application for an order against another party may be required to be made by motion.

(5) "Attorney" includes a law partnership or corporation.

(6) "Bankrupt." When any act is required by these rules to be performed by a bankrupt or when it is necessary to compel attendance of a bankrupt for examination and the bankrupt is not a natural person: (A) if the bankrupt is a corporation, "bankrupt" includes, if designated by the court, any or or all of its officers, members of its board of directors or trustees or of a similar controlling body, a controlling stockholder or member, or any other person in control; (B) if the bankrupt is a partnership, "bankrupt" includes any or all of its general partners or, if designated by the court, any other person in control.

(7) "Bankruptcy judge" means the referee of the court of bankruptcy in which a bankruptcy case is pending, or the district judge of that court when issuing an injunction under § 2a(15) of the Act and when acting in lieu of a referee under § 43c of the Act or under Rule 102.

(8) "Judgment" includes any order appealable to the district court or, if entered by a district judge when acting as a bankruptcy judge, appealable to the court of appeals.

(9) "Motion" means an application to the court for an order in an adversary proceeding or in a proceeding on a contested petition, to vacate an adjudication, or to determine any other contested matter. Unless made during a hearing or trial, a motion shall be made in writing, shall conform substantially to a pleading in form, shall state with particularity the grounds therefor, and shall set forth the relief or order sought.

(10) "Pleadings" include those allowed by Rule 7(a) of the Federal Rules of Civil Procedure and the petition and the responsive pleadings allowed by Rule 112.

NOTES OF ADVISORY COMMITTEE ON RULES

Except for its definition of "bankrupt," which supplements the definition in § 1(4) of the Act, this rule defines words and phrases not included in the Act's definitions.

(1) & (5). The definitions of "accountant" and "attorney" recognize that a professional firm as well as an individual may act as an accountant or attorney under these rules. For these purposes no distinction is drawn between a professional partnership, a professional corporation, and an individual who practices the profession. The development of professional corporations, motivated primarily by tax considerations, is discussed in Deering, *Incorporation by Attorneys*, 42 Ore.L.Rev. 93 (1963); Frost, *Some Comments as to Professional Corporation Statutes*, 4 Ariz.L.Rev. 169 (1963); Comment. *Professional Associations and Professional Corporations*, 16 Sw.L.J. 462 (1962).

(3). The definition of "affiliate" is derived from the definitions of "subsidiary company" and "affiliate" in the Public Utility Holding Company Act of 1935 in 15 U.S.C. § 79b(a)(8)(A) and (11), and the definition of "subsidiary" in § 106(13) of the Bankruptcy Act. The minimum percentage of ownership, control, or holding of the outstanding voting securities in clauses (A), (B), and (C) is set at 25% rather than the lesser percentages found in the cited provisions of the Public Utility Holding Company Act or the majority of the stock having power to vote prescribed by § 106(13) of the Act. *Cf.* 15 U.S.C. § 80a-2(a)(9), where beneficial ownership of more than 25% of the voting securities of a company constitutes presumptive control for the purposes of the Investment Company Act of 1940. An "affiliate" of a bankrupt includes not only its "subsidiary" as defined in § 106(13) of the Act but also a "parent" when a subsidiary is the bankrupt. Moreover, the definition explicitly recognizes that an "affiliate" of the bankrupt may include a corporation having a common parent with the bankrupt by virtue of the parent's control of the voting securities of both subsidiary corporations. Clauses (D) and (E) are adaptations of the first clause of § 106(13), embracing the lessor as well as the lessee within the term "affiliate." The definition of "subsidiary" in the Act has served the limited purpose of indicating the permissible scope of the special venue provision in § 129 of the Act, which is applicable only when a petition by or against a parent corporation has been approved. 6 Collier ¶ 2.17 (1965). The definition of "affiliate" in this rule gives substantially more liberal scope to the special venue and transfer provisions of Rule 116(a)(4) and (c) and to the authorization for joint administration in Rule 117(b).

(4). Many proceedings in a bankruptcy case are purely administrative, involving no adverse parties and requiring none of the formalities and safeguards of notice and hearing characteristic of civil litigation. When the bankrupt or trustee or other party seeks an order involving no adverse party, he will ordinarily need only to file an "application" conforming to the definition in this rule. See, *e.g.*, Rules 515 (application to reopen a case) and 606(b)(2) (application for private sale). Special requirements may apply to particular applications. See, *e.g.*, Rules 107(b)(1) (application for permission to pay filing fees in installments), 201(b) (application for receiver), and 219(a) (application for compensation or reimbursement or expenses). On occasion an application may be contested, and in such case the court, may require the applicant to conform his request to a motion or pleading. See Rule 914. The definition of "application" conforms

generally to usage in the Act and under the General Orders and Official Forms. See, *e.g.*, §§ 2a(3) and 69a (application for receiver), 10a and 21a (application for an examination), 57n (application for extension for filing claim), and 58a(8) (application for compensation) of the Act. The application for discharge referred to in §§ 7a(1) and 14 of the Act and in Official Form No. 41, and the application for amendments to the petition and schedules referred to in General Order 11 have been eliminated as unnecessary formalities.

(*6*). The definition of "bankrupt" in § 1(4) of the Act applies under these rules. Clause (6) of this rule supplements the statutory definition by incorporating into it the meanings given the word in certain contexts by §§ 7b and 10c of the Act.

(*7*). Since Rule 102 requires all bankruptcy cases to be referred, the judical and administrative functions assigned the court by the Act and these rules will be performed by a referee in all but a few instances. The term "bankruptcy judge" has been employed throughout the rules as a useful designation of the referee of the court in which a case is pending or the district judge when he acts in lieu of a referee. The term applies to the referee or the judge when either issues an injunction in a bankruptcy case pursuant to § 2a(15), but the statutory provision restricting the power to enjoin a court to the judge still applies under these rules. Clarity is served by distinguishing between the referee and the district judge in some rules. See, *e.g.*, Rule 115 which governs the hearing on a contested petition, including a jury trial when one is requested, and Rule 920, which governs hearings in contempt proceedings.

(*8*). The definition of "judgment" in clause (8) like that in Rule 902(5), is adapted from Rule 54(a) of the Federal Rules of Civil Procedure. Notwithstanding the seemingly unlimited scope of appealability under §§ 2a (10) and 39c of the Act, the courts have recognized that some orders lack sufficient finality to be subject to review under those sections. See 2 Collier ¶ 39.21 (1968).

(*9*). The definition of "motion" is derived from Rule 7(b) of the Federal Rules of Civil Procedure, which has generally been held applicable in contested proceedings in a bankruptcy case. The use of the term in these rules is restricted to proceedings involving adverse parties and conforms to general usage in this regard. Compare the definition of "application" *supra*. See, *e.g.*, *In re J. & M. Doyle Co.*, 130 F.2d 340, 341 (3d Cir. 1942) (oral motion for extension of time for filing petition for review of allowance of claim held insufficient); *In re Long Island Properties, Inc.*, 125 F.2d 206, 207 (2d Cir. 1942) (motion seeking approval of contract between trustee and building contractor held insufficient for lack of particularity); *cf. Georgia Jewelers, Inc. v. Bulova Watch Co.*, 302 F.2d 362, 366 (5th Cir. 1962) (recognizing that failure to follow Fed. R. Civ. P. 7(b)(1) literally in making motions for amendment of petition may be cured).

(*10*). Since Rule 707 makes Rule 7(a) of the Federal Rules of Civil Procedure applicable in adversary proceedings, the pleadings allowed in such proceedings are those listed in subdivision (a) of the latter rule. When the term "pleadings" is used generally in the rules, as in Rule 904(a) and 911(a), it includes the "petition" as defined in § 1(24) of the Act and the pleadings permitted by Rule 112.

Rule 902. Meanings of Words in the Federal Rules of Civil Procedure When Applicable in Bankruptcy Cases.

The following words and phrases used in the Federal Rules of Civil Procedure made applicable in bankruptcy cases by these rules have the meanings herein indicated unless they are inconsistent with the context:

(1) "Action" or "civil action" means an adversary proceeding or, when appropriate, a proceeding on a contested petition, to vacate an adjudication, or to determine any other contested matter.

(2) "Appeal" includes appeal from the referee to the district court, and "appellate court" means the district court.

(3) "Clerk" or "clerk of the district court" means an assistant employed by the referee and designated as his clerk by the referee's order, unless the offices of the clerk of the district court and the referee are consolidated or a proceeding is before the district judge.

(4) "District court," "trial court," "court," or "judge" means bankruptcy judge.

(5) "Judgment" includes any order appealable to the district court or, if entered by a district judge when acting as a bankruptcy judge, appealable to the court of appeals.

NOTES OF ADVISORY COMMITTEE ON RULES

These rules make many of the Federal Rules of Civil Procedure applicable in bankruptcy cases or in proceedings thereon, and this rule indicates the substitution or translation of certain terms that is necessary for this purpose.

In particular, the Federal Rules of Civil Procedure largely govern an adversary proceeding, which is to be read for "action" or "civil action" whenever either of these terms appears in any of the Civil Rules made applicable by the Bankruptcy Rules in Part VII. Rule 121 also makes many of the Civil Rules applicable to a proceeding on a contested petition or to vacate an adjudication, and for this purpose "action" or "civil action" is to be read as referring to such a proceeding. When the Civil Rules are made applicable to a contested matter by or pursuant to Rule 914, "action" or "civil action" refers to the contested matter in this context.

Rule 903. Rule of Construction.

These rules shall be construed to secure the expeditious and economical administration of every bankrupt estate and the just, speedy, and inexpensive determination of every proceeding in bankruptcy.

NOTES OF ADVISORY COMMITTEE ON RULES

The objective of "expeditious and economical administration" of bankrupt estates has frequently been recognized by the courts to be "a chief purpose of the bankruptcy laws." See *Katchen v. Landy*, 382 U.S. 323, 328 (1966); *Bailey v. Glover*, 88 U.S. (21 Wall.) 342, 346–47 (1874); *Ex parte Christy*, 44 U.S. (3 How.) 292, 312–14, 320–22 (1845). The rule also incorporates the wholesome mandate of the last sentence of Rule 1 of the Federal Rules of Civil Procedure. 1 Moore ¶ 1.13 (1967); 4 Wright & Miller, *Federal Practice and Procedure—Civil* § 1029 (1969).

Rule 904. General Requirements of Form.

(a) Legibility; Abbreviations.

All pleadings, schedules, and other papers shall be clearly legible. Abbreviations in common use in the English language may be used.

(b) Caption.

Each paper filed shall contain a caption setting forth the name of the court, the title of the case, the bankruptcy docket number, and a brief designation of the character of the paper.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (*a*) of this rule relaxes restrictions on the use of abbreviations and interlineations that have been imposed by General Order 5(1). Common abbreviations and interlineations may have special justification when circumstances require alterations in offical forms printed for general use.

Subdivision (*b*) derives from General Order 5(3). Additional requirements applicable to the caption for a petition are found in Rule 106, the caption for notices to creditors in Rule 203(h), and to the caption for a pleading in an adversary proceeding in Rule 710. A caption for an application in an uncontested matter or for a motion filed in a proceeding involving the petition or the adjudication need comply only with this rule. A caption for a motion filed in an adversary proceeding or contested matter not involving the petition or adjudication may be adapted from Official Form No. 25.

Effect of noncompliance. Noncompliance by a party with this or any other rule imposing a merely formal requirement does not ordinarily result in the loss of his rights. See Rule 905.

Rule 905. Harmless Error.

Rule 61 of the Federal Rules of Civil Procedure applies in bankruptcy cases. When appropriate, the court may order or effect correction of such an error or defect.

NOTES OF ADVISORY COMMITTEE ON RULES

Rule 61 of the Federal Rules of Civil Procedure has been followed in bankruptcy cases, *Manhattan Shirt Co. v. Tomlinson*, 327 F.2d 449, 453 (9th Cir. 1964); *Rogers v. Raffe*, 141 F.2d 374, 376 (2d Cir.), cert. denied, 323 U.S. 721 (1944); *In re Westermann Co.*, 51 F.Supp. 776, 777 (S.D. N.Y. 1943), aff'd sub nom. *Oldden v. Tonto Realty Corp.*, 143 F.2d 916 (2d Cir. 1944). The second sentence of this rule recognizes that procedural convenience may sometimes be served as well by a ministerial correction in the office of the referee as by requiring a party to comply with an applicable requirement, as, for example, when an erroneous caption has been used or an obvious typographical error has been made. *Cf.* Rule 509(c) and § 39a(9) of the Act.

Rule 906. Time.

(a) Computation.

In computing any period of time in a bankruptcy case Rule 6(a) of the Federal Rules of Civil Procedure applies.

(b) Enlargement.

When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without application or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon application made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 107(b)(2), 115(b)(4) insofar as it makes Rule 50(b) of the Federal Rules of Civil Procedure applicable in bankruptcy cases, 302(e), 403(c), 607, 752(b), 802, 923, and 924, except to the extent and under the conditions stated in them.

(c) Reduction.

When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may in its discretion with or without application or notice order the period shortened; but it may not reduce the time for taking any action under Rules 203(a), 204(a)(1), 302(e), 404(a) and (b), 409(a)(2), and 802, except to the extent and under the conditions stated in them.

(d) For Motions—Affidavits.

Rule 6(d) of the Federal Rules of Civil Procedure applies in bankruptcy cases, except that the reference to Rule 59(c) shall be read as a reference to Bankruptcy Rule 923.

(e) Time of Service or Notice by Mail.

Service or notice by mail is complete upon mailing.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (a). This rule is an adaptation of Rule 6 of the Federal Rules of Civil Procedure. It governs the time for acts to be done and proceedings to be had in bankruptcy cases and, to that extent, supersedes § 31 of the Act. The cases and commentators are in conflict as to whether Rule 6 of the Federal Rules of Civil Procedure governs the computation of any period of time preceding the commencement of an action. See 2 Moore ¶ 6.06, at 1470–72 (1960); 4 Wright & Miller, *Federal Practice and Procedure—Civil* §§ 1163–64 (1969). In any event the court may resort to this Rule 906(a) as an appropriate guide for such a situation in the absence of a conflicting federal or state statute.

Subdivision (b) follows Rule 6(b) of the Federal Rules of Civil Procedure and Rule 26(b) of the Federal Rule of Appellate Procedure, both in granting discretion generally to authorize extensions of time for the doing of acts required or allowed under the rules and in excluding certain post-judgment acts from these that can be the subect of such an extension. In the interest of expediting proceedings in bankruptcy the last clause of subdivision (b) adds a number of acts for which more time cannot be granted under the first part of the subdivision. Thus the time periods allowed by Rule 107(b)(2) for the payment of filing fees in installments cannot be extended because of disproportionate costs and delay to bankruptcy administration that result from such extensions. Similar considerations underlie the limitations on the extension of time for filing claims (Rule 302(e)), for objecting to the trustee's report setting apart exemptions (Rule 403(c)), for assuming an executory contract (Rule 607), and for serving affidavits in support of and in opposition to a motion for new trial (Rule 923 insofar as it makes Rule 59(c) of the Federal Rules of Civil Procedure applicable in bankruptcy cases). Case law has generally been in accord in respect to the limitations on the filing of claims prescribed by § 57n of the Act. 3 Collier ¶ 57.27[2] (1964).

Subdivision (c) incorporates into the rules the general authority conferred by the last sentence of General Order 37 to shorten time limitations prescribed by the Federal Rules of Civil Procedure when they are applied in bankruptcy cases. The authority to reduce the time allowable for doing of an act is extended so as to apply generally in such cases but is subject to specific exceptions: Rule 203(a) follows § 58a of the Act, from which it is derived, in detailing the conditions under which it is appropriate to reduce the 10-day period prescribed for notice to creditors. An order for holding the first meeting of creditors under Rule 204(a)(1) within less than 10 days after adjudication would be incompatible with the premise of creditor control that underlies the provisions for such a meeting. The references in the last clause of subdivision (c) to Rules 302(e) and 404 (a) and (b) are consonant with the case law that has developed under the Act—*i.e.*, that the times allowed by § 57n for the filing of claims and by § 14b for the filing of objections to discharge and the time prescribed by § 58b for the notice of the deadline for filing such objections are not subject to reduction by court order. See 3 Collier, *supra* at 375–76, 510. Reduction of the period allowed for filing notice of an appeal under Rule 802 would operate with undue severity against a party entitled to appeal. Similar considerations underlie the protection of a party against a reduction of the time for filing a complaint to determine dischargeability of a debt under § 17c(2) of the Act.

Subdivision (d) follows Rule 6(d) of the Federal Rules of Civil Procedure but directs a reference to Bankruptcy Rule 923 in lieu of the reference to Rule 59(c) because of the exception in Bankruptcy Rule 923 that renders the Civil Rule inapplicable to motions to reconsider orders allowing and disallowing claims.

Subdivision (e) is derived from the last sentence of Rule 5(b) of the Federal Rules of Civil Procedure. See also Rule 25(c) of the Federal Rules of Appellate Procedure. All of Civil Rule 5(b) is applicable in adversary proceedings by virtue of Bankruptcy Rule 705(a), and in all proceedings relating to contested petitions and to vacate adjudications by virtue of Rule 121. By subdivision

(e) of this rule the last sentence of Civil Rule 5(b) is made applicable in contested matters and to the service by mail of all types of notice under these rules. The provision for additional time for service by mail in Rule 6(e) of the Federal Rules of Civil Procedure does not apply in bankruptcy cases for the reason that this mode of service is conventional in proceedings subject to these rules (see, *e.g.*, Rules 203(a)–(g) and 704(c)), and time limits have been prescribed on the assumption that notices and other papers will be served by mail. See the Notes to Rules 712(a) and 730.

Rule 907. General Authority to Regulate Notices.

Whenever notice is to be given under these rules, the court shall designate, if not otherwise specified herein, the time within which, the persons to whom, and the form and manner in which the notice shall be given. Whenever feasible, the court may order any notices under these rules to be combined.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is an adaptation of §§ 120, 315, 415, and 615 of the Act. Subject to the paramount provisions of Rule 203 and other rules dealing specifically with notice, this rule gives the court the same authority respecting the giving of notice in straight bankruptcy that it has had in proceedings under Chapters X, XI, XII, and XIII.

Rule 908. Publication.

Whenever these rules require or authorize service or notice by publication, the court shall, to the extent not otherwise specified in these rules, determine the form and manner thereof, including the newspaper or other medium to be used and the number of publications.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule supersedes § 28 of the Act. Publication is authorized by Rules 111, 203(h), and 704(d)(2)

Rule 909. Forms.

The official forms annexed to these rules shall be observed and used, and such alterations as may be appropriate to suit the circumstances. Forms may be combined and their contents rearranged to permit economies in their use. The Director of the Administrative Office of the United States Courts may promulgate illustrative forms for use under the Act.

NOTES OF ADVISORY COMMITTEE ON RULES

The first sentence of this rule is a paraphrase of General Order 38. The rule continues the obligatory character of the official forms in the interest of facilitating the processing of the paperwork of bankruptcy administration. See 2 Collier 1288 (1966). The use of the official forms has generally been held subject to a "rule of substantial compliance." *Id.* ¶ 30.04. See also Rules 904 and 905. The second sentence explicitly recognizes the propriety of combining and rearranging official forms to take advantage of technological developments and resulting economies. The number of official forms has been reduced, but the third sentence, which is new, authorizes the Director of the Administrative Office to develop and promulgate illustrative forms in addition to those that are prescribed as official forms.

Rule 910. Representation and Appearances; Powers of Attorney.

(a) Authority to Act Personally or by Attorney.

A bankrupt, creditor, or other party may appear in a bankruptcy case and act either in his own behalf or by an attorney authorized to practice in the court. A creditor may also perform any act not constituting the practice of law, by an authorized agent, attorney in fact, or proxy.

(b) Notice of Appearance.

An attorney appearing for a party shall file a notice of appearance with his name and business address unless his appearance is otherwise noted in the record.

(c) Power of Attorney.

The authority of any agent, attorney in fact, or proxy to represent a creditor for any purpose other than the execution and filing of a proof of claim shall be evidenced by a power of attorney conforming substantially to Official Form No. 13 or Official Form No. 14. The execution of any such power of attorney shall be acknowledged before one of the officers enumerated in Rule 912.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivisions (a) and (b). The first 2 subdivisions of this rule are a revision of General Order 4. Service of notices and orders, which is dealt with by the last sentence of General Order 4, is governed under these rules by Rule 705(a).

Attorney at law and attorney in fact. The word "attorney" as used in this rule means attorney at law unless qualified by the addition of the words "in fact." The second sentence of subdivision (a) recognizes the implications of the definition of "creditor" in § 1(11) of the Act but is not intended to authorize laymen to engage in the practice of law The newly added requirement of subdivision (b) that an attorney file a notice of apeparance conforms to general practice. Compliance with the filing requirement is excused if the attorney's appearance is otherwise a matter of record in the case, as by a notation on a paper filed in the case, on the docket or claim register, or in a stenographic record of proceedings in the case. The requirement of General Order 4 that orders contain the name of the moving party or attorney is omitted as the imposition of an unnecessary formality.

Subdivision (c) is an adaptation of General Order 21(5). The subdivision requires explicitly what has been uniform practice in respect to powers of attorneys executed by creditors, *viz.*, substantial compliance with the requisites of the appropriate official form. Acknowledgement before an officer is required in recognition of the solemn character of the instrument and of the desirability of assuring the creditor who executes it an opportunity to reflect on the scope of the authority being vested in the grantee of the power. The requirement heretofore imposed by General Order 21(5) that any person executing a power of attorney on behalf of a partnership also take an oath that he is a duly authorized officer, has been deleted as excessively formalistic and not warranted by any safeguard it affords bankruptcy administration. Official Forms No. 18 and No. 19 renumbered No. 13 and No. 14 respectively, have been revised at the same time to require a statement of the authority of the person executing a power of attorney on behalf of a corporation or a partnership to be acknowledged. The burden imposed by the last sentence of General Order 21(5) on the person executing a power of attorney to establish his identity by satisfactory proof when not personally known to the officer taking his acknowledgement probably goes no further than to state the law applicable without the sentence and is omitted as unnecessary.

Rule 911. Signing and Verification of Pleadings and Other Papers.

(a) Signature.

Every pleading and every written motion of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated, and every written application must be so signed by an attorney or by the party making it. A party who is not represented by an attorney shall sign his pleading or written motion or application and state his address. The signature of an attorney on any pleading, motion, or application served or filed in a bankruptcy case constitutes a certificate by him that he has read the paper; that to the best of his knowledge, information, and belief, there is good ground to support it; and that it is not interposed for delay or other improper purpose. If a pleading, or written motion or application, is not signed or is signed with intent to defeat the purpose of this rule, it may be striken as sham and false, and the case may proceed as though the paper had not been served or filed. For a wilful violation of this rule an attorney may be subjected to appropriate disciplinary action. Similar action may be taken if scandalous or indecent matter is inserted.

(b) Verification.

Except as otherwise specifically provided by these rules, papers filed in a bankruptcy case need not be verified.

(c) Copies of Signed or Verified Papers.

When these rules require copies of a signed or verified paper, it shall suffice if the original is signed or verified and the copies are conformed to the original.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is an adaptation of Rule 11 of the Federal Rules of Civil Procedure.

Subdivision (*a*) follows Rule 7(b)(2) of the Federal Rules of Civil Procedure in subjecting written motions to the rules respecting signatures that govern signatures to pleadings. Any written application must also be signed but is not required to be signed by the party's attorney. An attorney's signature on any pleading motion, or application served in a bankruptcy case certifies to the same facts respecting it as does an attorney's signature on a pleading under Rule 11 of the Federal Rules of Civil Procedure. In addition his signature certifies that the paper is not filed for any improper purpose. The provisions regarding signature and verification have been placed in separate subdivisions. The sentence in Civil Rule 11 abolishing the equity rule as to what is required to overcome a verified answer is omitted as unnecessary.

Subdivision (*b*) extends to all all papers filed in bankruptcy cases the policy of minimizing reliance on the formalities of verification which is reflected in the third sentence of Rule 11 of the Federal Rules of Civil Procedure. Bankruptcy Rules explicitly requiring verification or an affidavit are 109 (petitions, schedules, statements of affairs, and amendments thereof), 206(a) (application to compel attendance for examination), 208(d) (list of multiple proxies and statement of the circumstances regarding their acquisition), 601(d) (complaint for *ex parte* relief from stay), and 765 (incorporating requirement of Fed.R.Civ.P. 65(b) applicable when temporary restraining order sought).

Subdivision (*c*) is intended to relieve parties of the burden of signing or verifying multiple copies of papers to be filed in bankruptcy cases. A bankrupt has typically been required to sign his name over 50 times in completing a voluntary petition, schedules, and statement of affairs. The inconvenience imposed thereby is disproportionate to any resultant benefit to bankruptcy administration.

Rule 912. Oaths and Affirmations.

(a) Persons Authorized to Administer Oaths.

A referee, a person designated by the referee in an order filed in the office of the clerk of the district court, an officer authorized to administer oaths in proceedings before the courts of the United States or under the laws of the state where the oath is to be taken, or a diplomatic or consular officer of the United States in any foreign country, may administer oaths and affirmations and take acknowledgments.

(b) Affirmation in Lieu of Oath.

Whenever in a bankruptcy case an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (*a*) is a revision of § 20a of the Bankruptcy Act, adding to the classes of persons authorized to administer oaths to persons duly designated by referees and including affirmations and acknowledgments in the acts authorized to be executed before the persons named. *Cf.* 28 U.S.C. §§ 459 and 953, authorizing justices, judges, clerks of court, and their deputies to administer oaths and affirmations and to take acknowledgments.

Subdivision (*b*) is derived from Rule 43(d) of the Federal Rules of Civil Procedure and §§ 1(21) and 20b of the Act. See also 1 U.S.C. § 1 and Rule of 603 of the Federal Rules of Evidence.

Rule 913. Habeas Corpus.

(a) For Performance of Duties Under the Act.

The bankruptcy judge may issue a writ of habeas corpus when appropriate to bring a person before the court for examination or to testify or to perform a duty imposed upon him under the Act.

(b) For Release of Bankrupt from Imprisonment.

If the bankrupt is arrested or imprisoned on process in any civil action, the bankruptcy judge may issue a writ of habeas corpus and, after hearing on notice to the adverse party in such action, may order the bankrupt's relase if the process is found to have been issued for the collection of a dischargeable debt.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (*a*) of this rule is an adaptation of General Order 30 but goes beyond it in recognizing the availability of habeas corpus to bring not only the bankrupt but any other person in custody before the court of bankruptcy for the purpose of testifying. It also codifies the view of the cases which recognize the proprietry of issuance of a writ to bring a person before the court for the purpose of enabling him to perform a duty imposed upon him under the Act. *E.g., Rose v. Mangano,* 111 F.2d 114, 115 (2d Cir. 1940); *In re Thomashefsky,* 51 F.2d 1040, 1041–42 (2d Cir. 1931); 1A Collier 1087 (1940). When resorted to for such a purpose, habeas corpus is not "the high prerogative writ of habeas corpus, the great object of which is deliverance from unlawful imprisonment," but "merely the ancient common-law precept." *In re Thaw,* 166 Fed. 71, 74 (3d Cir. 1908). The availability of the writ of habeas corpus for this purpose rests within the discretion of the court. If a deposition would serve the need for the person's testimony, the writ should ordinarily be denied. *In re Thaw.* 172 Fed. 288, 289 (W.D.Pa. 1908); 4 Moore ¶ 26.11 (1962).

Subdivision (*b*) is derived from § 9 of the Act and provisions of General Order 30 that authorize discharge of a bankrupt from a commitment on process in a civil action. Section 9 purports to exempt a bankrupt only from arrest on civil process issued on a dischargeable claim, but case law has generally afforded the bankrupt relief from custody commencing prior to bankruptcy as well as from arrest on such process during the pendency of the bankruptcy case. See 1A Collier ¶ 9.03 (1940). An implication of General Order 12(1) that a bankrupt requires no protection by the bankruptcy court from arrest after a determination of his right to discharge is undermined by the legislation of 1970 that enacted §§ 14f (2) and 17c(4) of the Act. By § 14f(2) an order of discharge constitutes an injunction against all creditors whose debts are discharged from thereafter instituting or continuing any action or employing any process to collect such debts. As pointed out in the Note accompanying Rule 401, § 17c(4) further authorizes the bankruptcy court to enjoin any creditor from instituting or continuing any action on any debt, whether or not dischargeable. While subdivision (b) follows § 9(2) of the Act in recognizing the propriety of releasing a bankrupt imprisoned on process to collect a dischargeable debt, the rule constitutes no limitation on the powers vested in the court by §§ 2a(15) and 17c(4) of the Act to protect a bankrupt and the administration of the estate against proceedings that interfere with the enforcement of the provisions or offend the policy of the Act. See 1 Collier ¶¶ 2.61–2.63 (1971).

Rule 914. Procedure in Contested Matters Not Otherwise Provided for.

In a contested matter in a bankruptcy case not otherwise governed by these rules, relief shall be requested by motion, and reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought. In all such matters, unless the court otherwise directs, the following rules shall apply: 721, 725, 726, 728–737, 741, 742, 744.1, 752, 754–756, 762, 764, 769, and 771. The court may at any stage in a particular matter direct that one or more of the other rules in Part VII shall apply. A person who desires to perpetuate his own testimony or that of another person regarding any matter that may be cognizable and relevant in a contested matter in a pending bankruptcy case may proceed in the same manner as provided in Rule 727 for the taking of a deposition before an adversary proceeding. For the purposes of this rule a reference in the rules in Part VII to adversary proceedings shall be read as a reference to contested matters. Notice of an order or direction under this rule shall be given when necessary or appropriate to assure to the parties affected a reasonable opportunity to comply with the procedures made applicable by the order.

NOTES OF ADVISORY COMMITTEE ON RULES

The elemental requisites of due process must be afforded all parties to a dispute determined in the bankruptcy court. Litigation of a particular dispute, although not an adversary proceeding as defined in Rule 701, may become sufficiently serious and complicated to warrant the court's direction that the procedure be governed by rules that govern such proceedings. Thus, the court may on occasion direct that the rules should govern a hearing on an objection to the trustee's report setting apart exemptions, *cf.* 1. Collier ¶ 6.22 (1960), or an objection to a proof of claim, see 3 *id.* ¶ 57.18 (1961). The rules in Part VII referred to in this rule are adaptations of the Federal Rules of Civil Procedure for the purpose of governing procedure in adversary proceedings in bankruptcy cases. See the Note accompanying Rule 701 *supra*. Certain terms used in the Federal Rules of Civil Procedure have altered meanings when made applicable in bankruptcy cases by these rules. See Rule 902 *supra*. Another rule, Rule 121, makes certain of the rules of Part VII applicable in proceedings relating to a contested petition and proceedings to vacate an adjudication.

Rule 915. Objection to Jurisdiction of Court of Bankruptcy.

(a) Waiver of Objection to Jurisdiction.

Except as provided in Rule 112 and subject to Rule 928, a party waives objection to jurisdiction of an adversary proceeding or a contested matter and thereby consents to such jurisdiction if he does not make objection by a timely motion or answer, whichever is first served.

(b) Dismissal or Transfer.

If an objection to the jurisdiction of an adversary proceeding, a contested matter, or a severable part of either, is sustained, the bankruptcy judge shall dismiss such proceeding, matter, or part thereof, or transfer it to the civil docket of the district court, as may be appropriate. On transfer pursuant to this rule, the proceeding, matter, or part thereof shall continue as if filed as a civil action in the district court on the date it was filed in the court of bankruptcy.

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Subdivision (a). If a petition is filed against a person who is not amendable to adjudication under section 4 of the Act, an objection to the jurisdiction of the court over the proceeding so commenced may be filed as provided in Rule 112 That rule generally incorporates the provisions of Rule 12 of the Federal Rules of Civil Procedure, including subdivision (h) thereof, which permits lack of jurisdiction of the subject matter to be raised "by suggestion of the parties or otherwise" at any time. If a voluntary petition is filed by a person not entitled to the benefits of bankruptcy, the lack of jurisdiction may likewise be raised at any time as by a motion to vacate the adjudication pursuant to Rule 121. The Act's definition of persons who may become bankrupts limits the jurisdiction of subjects matter, which cannot be enlarged by consent or waiver. *Woolsey v. Security Trust Co.*, 74 F.2d 334 (5th Cir., 1935); Seligson & King, *Jurisdiction and Venue in Bankruptcy*, 36 Ref. J. 36, 38–40 (1962). Section 2a(7) of the Act, on the other hand, constitutes the failure to make appropriate objection a consent sufficient under the statute to support jurisdiction of the bankruptcy court over any controversy arising in a proceeding under the Act. Rule 915(a), implementing this statutory arising in a proceeding under the Act. Rule 915(a), implementing this statutory provision, does not apply to the making of an objection to the jurisdiction of the court to adjudicate and administer the estate of an ineligible bankrupt. Nor does the rule apply to the making of an objection to the court's jurisdiction over a controversy that does not arise in the course of or relate to the administration of the estate of an adjudicated bankrupt or his discharge. See Rule 928.

The premise of subdivision (a) is that a party to any controversy being litigated in the bankruptcy court must object to the court's jurisdiction at the first opportunity in order to avoid being deemed to have consented thereto. If he makes any objection or defense of the kind that may be made by a pre-pleading motion under Rule 12(b) of the Federal Rules of Civil Procedure, he is required by this rule to include therein any objection he has to the bankruptcy court's retention of jurisdiction of the case If no such motion is made, the objection may be made only if included in a timely answer. In order for a motion or answer to be timely under this rule it must be served wtihin the time limits allowed by Rule 712 when they are applicable.

Subdivision (a) of this rule does not purport to be a limitation on the ways of consenting to jurisdiction of the bankruptcy court. Consent may be found in conduct of various kinds amounting to submission of an issue or a matter to the court's determination. *In re Read-York, Inc.*, 152 F.2d 313, 316 (7th Cir. 1945); 2 Collier ¶ 23.03 (1961).

Subdivision (b). The bankruptcy court may have jurisdiction of a proceeding involving the bankrupt estate if the defendant consents, even when the defendant could not otherwise have been sued at all in federal court. See, *e.g.*, *In re Prima Co.*, 98 F.2d 952, 959 (7th Cir. 1938), cert denied, 305 U S. 658 (1939), where the trustee sued two banks for losses caused by their agent's mismanagement of the debtor and the bankruptcy court's jurisdiction of the action was sustained as to one of the banks, which had consented by submitting to a hearing on the merits and participating therein. On the other hand, a defendant who is suable in a United States district court may be entitled to a plenary trial on making a timely objection to proceeding before the referee. Such a possibility is presented, for example, when the trustee sues a transferee in possession under § 60b, 67d, or 70e of the Act, or when he sues under § 70a of the Act to recover more than the jurisdictional minimum from a defendant whose citizenship is different from that of the bankrupt. See, *e.g., Harrison v. Chamberlain*, 271 U.S. 191 (1926). Subdivision (b) recognizes the possibility illustrated by *In re Prima Co.* that it may be appropriate for the court to dismiss a party and the proceeding against him but retain jurisdiction insofar as the proceeding is against a consenting party or is otherwise subject to the court's jurisdiction. Heretofore when timely objection to the bankruptcy court's jurisdiction has been made, the court has dismissed the proceeding, or so much of it as was vulnerable to the objection, and subjected the trustee to the necessity of commencing a pelnary action, although it might have been brought in the United States district court sitting in the same courthouse. *Harrison v. Chamberlain, supra;* 5 Moore 69 n.27 (1951). This rule recognizes that the proceeding, or a severable part of it, may appropriately be transferred to the civil docket kept by the clerk pursuant to Rule 79 of the Federal Rules of Civil Procedure If no ground of independent federal jurisdiction exists, dismissal would be warranted, unless it appears that the defendant would consent to a determination in the district court pursuant to § 23b of the Act.

Rule 916. Subpoena.

Rule 45 of the Federal Rules of Civil Procedure applies in bankruptcy cases, except that subpoenas may be issued in the name and under the authority of the bankruptcy judge and need not be under the seal of the court.

NOTES OF ADVISORY COMMITTEE ON RULES

Rule 45 of the Federal Rules of Civil Procedure has frequently been applied in bankruptcy cases. See *e.g., Freeman* v. *Seligson*, 405 F.2d 1326, 1334–36, 1348 (D.C. Cir. 1968); *Herron* v. *Blackford*, 264 F.2d 723, 725 (5th Cir. 19592; 2 Collier ¶ 21.30 (1964). This rule supersedes General Order 3 and the territorial limitation imposed by the proviso of § 41a of the Act on the effectiveness of a subpoena requiring attendance of a witness before a referee. See the Note accompanying Rule 205(e). An ancillary proceeding may be necessary or appropriate for examining a witness other than the bankrupt who cannot be served a subpoena within the limits prescribed. Rule 45 of the Federal Rules of Civil Procedure. See Rule 217(b); 2 Collier ¶¶ 21.20, 21.23 (1964). The form for a subpoena to a witness is prescribed in Official Form No. 27.

Rule 917. Evidence.

The Federal Rules of Evidence apply in bankruptcy cases, subject to specific provisions in these rules governing matters of evidence.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is correlated with Rule 1101(b) of the Federal Rules of Evidence, which provides that the Evidence Rules apply "to proceedings and cases under the Bankruptcy Act." These rules go beyond and supplement the Federal Rules of Evidence in prescribing the evidentiary effect to be accorded particular writings and recordings. See *e.g.*, Rules 212(g), 301(b), and 511(c).

Rule 918. Secret, Confidential, Scandalous, or Defamatory Matter.

On application or on its own initiative the court may make any order which justice requires (1) to protect the estate or any person in respect of a trade secret or other confidential research, development, or commercial information, or (2) to protect any person against scandalous or defamatory matter contained in any paper filed in a bankruptcy case. If an order is entered under this rule without notice, any person affected thereby may move to vacate or modify the order, and on notice the court shall determine such motion.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is new. It recognizes that on occasion the court may be warranted in entering a protective order on behalf of a person or the estate. The first classification of protective orders is of the kind authorized to be entered by the court under Rule 26(c)(7) of the Federal Rules of Civil Procedure when discovery is sought. The second classification recognizes that the public character of papers filed in a bankruptcy case does not preclude the court from protecting persons who may be unnecessarily harmed by scandalous or defamatory matter contained in such papers. *Cf. Dubnoff v. Goldstein*, 385 F.2d 717 (2d Cir. 1967). Rule 26(c) of the Federal Rules of Civil Procedure is suggestive of the range of orders that may be entered without compromising the principle underlying Rule 508 that all papers filed in a bankruptcy case are public records. See also *Freeman v. Seligson*, 405 F.2d 1326, 1348–52 (D.C. Cir. 1968); *Digital Data Systems, Inc. v. Carpenter*, 387 F.2d 529, 533 (5th Cir. 1967); 4 Moore ¶¶ 26.70–27.78 (1970); *cf. Dubnoff v. Goldstein*, 385 F.2d 717, 724 (2d Cir. 1967). Rule 911(a) also authorizes disciplinary action for the insertion of scandalous or indecent matter in a pleading or written motion or application by an attorney. The last sentence of this rule affords to any person affected by a protective order entered without notice to him an opportunity to move for its vacation or modification.

Rule 919. Compromise and Arbitration.

(a) Compromise.

On application by the trustee or receiver and after hearing on notice to the creditors as provided in Rule 203(a) and to such other persons as the court may designate, the court may approve a compromise or settlement.

(b) Arbitration.

On stipulation of the parties to any controversy affecting the estate the court may authorize the matter to be submitted to final and binding arbitration.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (a) of this rule is an adaptation of § 27 of the Act and the provisions of General Orders 28 and 33 that refer to compounding of claims and compromising of controversies. The provisions of General Order 28 dealing with redemption of property from a lien are carried into Rule 609.

Subdivision (b) is an adaptation of § 26 of the Act and language in General Order 33 referring to arbitration. The rule permits parties to a controversy to stipulate to final and binding arbitration if the court approves. The selection of the arbitrators is a matter to be covered by the stipulation but is likewise subject to the approval of the court.

Rule 920. Contempt Proceedings.

(a) Contempt Committed in Proceedings Before Referee.

(1) *Summary Disposition by Referee.* Misbehavior prohibited by § 41a(2) of the Act may be punished summarily by the referee as contempt if he saw or heard the conduct constituting the contempt and it was committed in his actual presence. The order of contempt shall recite the facts and shall be signed by the referee and entered of record.

(2) *Disposition by Referee upon Notice and Hearing.* Any other conduct prohibited by § 41a of the Act may be punished by the referee only after hearing on notice. The notice shall be in writing and shall state the time and place of hearing, allowing a rea-

sonable time for the preparation of the defense, and shall state the essential facts constituting the contempt charged and whether the contempt is criminal or civil or both. The notice may be given on the referee's own initiative or on motion by a party, by the United States attorney, or by an attorney appointed by the referee for that purpose. If the contempt charged involves disrespect to or criticism of the referee, he is disqualified from presiding at the hearing except with the consent of the person charged.

(3) *Limits on Punishment by Referee.* A Referee shall not order imprisonment nor impose a fine of more than $250 as punishment for any contempt, civil or criminal.

(4) *Certification to District Judge.* If it appears to a referee that conduct prohibited by § 41a of the Act may warrant punishment by imprisonment or by a fine of more than $250, he may certify the facts to the district judge. On such certification the judge shall proceed as for a contempt not committed in his presence.

(b) Contempt Committed in Proceedings Before District Judge.

Any contempt committed in proceedings before a district judge while acting as a bankruptcy judge shall be prosecuted as any other contempt of the district court.

(c) Right to Jury Trial.

Nothing in this rule shall be construed to impair the right to jury trial whenever it otherwise exists.

NOTES OF ADVISORY COMMITTEE ON RULES

Inherent power to punish for contempt. The power of a court to punish for contempt committed in proceedings before it has generally been recognized to be inherent. *Michaelson v. United States ex rel. Chicago, St. Paul, M. & O. R. Co.*, 266 U.S. 42, 65–67 (1924). That the courts of bankruptcy are included among those vested with such power was early recognized in *Boyd* v. *Glucklich*, 116 Fed. 131, 135 (8th Cir. 1902). It has often been doubted that the inherent power of a court to punish for contempt is subject to any substantial restriction by statute. See Larremore, *Constitutional Regulation of Contempt of Court*, 13 Harv. L. Rev. 615, 618–20 (1900); Paul, *The Rule-Making Power of the Courts*, 1 Wash. L. Rev. 223, 231 (1926); Note, 34 Harv. L. Rev. 424, 425–26 (1921); *cf. Cohn* v. *Bonhard Affiliations*, 30 App. Div. 2d 74, 75, 289 N.Y.S.2d 771, 775 (1st Dep't 1968); *Disruption of the Judicial Process, Report and Recommendations of the American College of Trial Lawyers*, Case & Comment, Sept.–Oct. 1970, at 28, 36–38. As recently noted in *Bloom v. Illinois*, 391 U.S. 194, 195 n.1 (1968), however, the power of Congress to regulate the punishment for contempt of federal courts was upheld in *Michaelson v. United States ex rel. Chicago, St.P., M. & O. R. Co.*, 266 U.S. 42, 65–67 (1924). The Court in the *Michaelson* case was nevertheless careful to recognize that the inherent power to punish for contempt vested in the courts of the United States "when called into existence and vested with jurisdiction over any subject." *Id.* at 65–66.

Statutes and rules regulating contempt in federal courts. Contempt in federal courts is now regulated by both rule and statute. See, *e.g.*, Rule 42 of the Federal Rules of Criminal Procedure and Rules 37(b)(1), 45(f), 53(d)(2), 56(g), and 70 of the Federal Rules of Civil Procedure; 18 U.S.C. §§ 401, 402, 3691, 3692; 29 U.S.C. § 528; 42 U.S.C. § 1995. The Act explicitly confers jurisdiction on courts of bankruptcy to "[e]nforce obedience by persons to all lawful orders, by fine or imprisonment or fine and imprisonment" (§ 2a(13)) and to "[p]unish persons for contempts committed before referees" (§ 2a(16)). Section 41a of the Act, which prohibits certain conduct in proceedings before the referee, is substantially a paraphrase of 18 U.S.C. § 401, the general federal contempt statute. Section 41b of the Act, however, requires the referee to certify the facts as to any violation of § 41a to the district judge for summary hearing and disposition. This rule revises the procedure for minor contempts.

The certification provision of § 41b of the Act is comparable to that in Rule 42(b) of the Federal Rules of Criminal Procedure which disqualifies a judge from presiding at a hearing on a charge of contempt involving disrespect or criticism of the judge. The status of the referee as a court has been established by Congress in the Act (§§ 1(9), 2a(10), 38, 39), and the acts in proceedings before them that constitute contempt have been identified in § 41a of the Act. The method chosen for determining the facts and the punishment is manifestly a matter of procedure and the purpose of the punishment is to enable the court to protect its own processes and to effectuate its own judgments.

Referee's authority respecting minor contempts. Paragraph (4) of subdivision (a) of this rule retains for all but minor contempts the certification procedure of § 41b of the Act. If it appears to a referee that conduct in proceedings before him may warrant imprisonment or a fine of more than $250, the referee should proceed under this paragraph. The referee may proceed under paragraph (1) or (2) of the subdivision to determine and punish conduct prohibited by § 41a of the Act, but paragraph (3) limits the punishment that can be meted out by the referee to a fine of not more than $250. The premise of the change in procedure for dealing with minor contempts is that the certification requirement of § 41b of the Act has in effect deprived the referee of the necessary power to protect proceedings before him from petty disturbances and acts of disobedience because of the inordinate inconvenience entailed by the statutory procedure for the judge and the referee. "Peccadilloes too trifling to be worth the bother of sending to another court for prosecution should not for that reason be committed with impunity." Nelles, *Summary Power to Punish for Contempt*, 31 Col.L.Rev. 956, 964 (1931). See also *Disruption of the Judicial Process, supra* at 35–36.

Summary disposition by referee. The referee is authorized by paragraph (1) of subdivision (a) to proceed summarily only to punish acts of misbehavior that obstruct a hearing before him and occur in his actual presence and within his sight or hearing. The order of contempt he is required to sign and enter of record must contain his certification that he saw or heard the contemptuous conduct and that it was committed in his actual presence. The summary disposition authorized by this paragraph is to be distinguished from the "summary jurisdiction" authorized by §§ 2a(7), 571, 67a(4), and 70a of the Act and the "summary proceedings in bankruptcy" authorized and "determined by decisions of this [*i.e.*, the Supreme] Court after due consideration of the structure and purpose of the Bankruptcy Act as a whole." See *Katchen v. Landy*, 382 U.S. 323, 328 (1966). Summary proceedings in bankruptcy are governed generally by these rules and are to be contrasted with plenary proceedings, which are governed by the Federal Rules of Civil Procedure when commenced and maintained in the United States district court or by applicable state rules of procedure when commenced and maintained in a state court. See the Note accompanying Rule 701. The summary disposition referred to in paragraph (1) of subdivision (a), on the other hand, is to be contrasted with the proceedings on notice required by paragraph (2) of this subdivision. These two paragraphs parallel subdivisions (a) and (b) of Rule 42 of the Federal Rules of Civil Procedure, and the differences between the 2 modes of disposition permitted under these 2 subdivisions are pertinent here. For a discussion of these differences see 8A Moore ¶ 42.04 (1969); 3 Wright, *Federal Practice and Procedure—Criminal* §§ 708, 710, 711 (1969). While the referee may preside at the proceeding on the contempt under either paragraph (1) or (2) of subdivision (a) of this rule, he may dispense with notice and the other procedural safeguards prescribed by paragraph (2) when confronted with contemptuous conduct of the kind prohibited by § 41a(2) of the Act. The limitations of paragraph (3) on the punishment that may be meted out by the referee apply whether he is proceeding under paragraph (1) or (2) of subdivision (a).

Disposition upon notice and hearing. Since in a proceeding where the referee certifies the facts to the district judge in accordance with paragraph (4) the contemptuous conduct will ordinarily not have been conducted in the actual presence of the judge, the contempt should be prosecuted and punished on notice and hearing rather than summarily as for direct contempts. *Cf. Cooke v. United States,* 267 U.S. 517, 534–37 (1925); Rule 42 of the Federal Rules of Criminal Procedure; 8A Moore ¶ 42.04[2] & [3] (1969); Note, *Procedures for Trying Contempts in the Federal Courts,* 73 Harv.L.Rev. 353, 360–62 (1959); Comment, *Civil and Criminal Contempt in the Federal Courts,* 57 Yale L.J. 83, 87–89 (1947).

As noted above the first 2 paragraphs are adaptations of Rule 42 of the Federal Rules of Criminal Procedure. In view of the similarity of the impact of sanctions for civil and criminal contempt on the contemnor and the difficulty of distinguishing between the proceedings for the 2 varieties of contempt, however, the procedural safeguards provided by this rule should be available without differentiation by reference to the characterization of the contempt as civil or criminal. See Nelles, *The Summary Power to Punish for Contempt,* 31 Col.L.Rev. 956, 960–61 (1931); Note, 73 Harv.L.Rev. 353, 369 (1959); Comment, 57 Yale L.J. 83, 100–07 (1947). The requirement that the notice designate whether the contempt is criminal or civil is imposed in the interest of fairness in getting the earliest practicable clarification of the nature and purpose of the proceeding. See *Gompers* v. *Bucks' Stove & Range Co.,* 221 U.S. 418, 444–52 (1911); *McCann* v. *New York Stock Exchange,* 80 F.2d 211, 214–15 (2d Cir.), cert. denied, 299 U.S. 603 (1935); *cf.* 9 Remington, *Bankruptcy* §§ 3530, 3546 (6th ed. 1955). Failure to include a reference to criminal contempt in the notice would not, however, be reversible error if the contemnor was accorded all the rights and privileges owing to a defendant in a criminal contempt proceeding. *United States v. United Mine Workers of America,* 330 U.S. 258, 298 (1947). "Even if it be the better practice to try criminal contempt alone and so avoid obscuring the defendant's privileges in any manner, a mingling of civil and criminal contempt proceedings must nevertheless be shown to result in substantial prejudice before a reversal will be required." 330 U.S. at 299–300. Nor does the fact that the notice erroneously identifies the proceeding as one for criminal contempt preclude the award of civil relief. See cases cited in Comment, 57 Yale L.J. 83, 98 n. 87 (1947).

Paragraph (2) of subdivision (a) follows prior bankruptcy practice rather than Rule 42(b) of the Federal Rules of Criminal Procedure in recognizing that a referee may initiate a contempt proceeding on his own initiative. See 1 Collier 319–20 (1968); 2 *id.* 1597 (1962); 9 Remington, *Bankruptcy* 182 (6th ed. 1955) (only in criminal contempt). The paragraph also departs from Criminal Rule 42(b) in requiring the notice to be in writing.

The last sentence of paragraph (2) adheres to the pattern of Rule 42(b) of the Federal Rules of Criminal Procedure in disqualifying the referee from presiding at a hearing involving disrespect to or criticism of the referee only when the disposition is on notice and hearing. When a referee is disqualified by this sentence, the facts may be certified by the referee to the judge, as provided in paragraph (4) of the subdivision; or, unless it appears that the conduct may warrant punishment by imprisonment or by a fine of more than $250, the proceeding may be transferred to another referee. Although contumacious conduct in the actual presence of the referee is likely to be disrespectful or critical of him, the need for summary disposition to vindicate the authority and dignity of the court and promptly to restore order overrides the interest in assuring impartiality by requiring certification to the district judge or reference to another referee. See Note, 73 Harv.L.Rev. 353, 362 (1959); *Disruption of the Judicial Process, supra* at 35–36. The limitation imposed by paragraph (3) on the punishment that may be ordered by the referee is a safeguard against excessive use of his power in circumstances when his personal feelings have become engaged.

It has been held that Federal Criminal Rule 42(b) does not preclude a judge from acting summarily in a case to punish a direct contempt although the accusing judge postponed the hearing until after the close of the trial in which the misconduct occurred. *Sacher v. United States,* 343 U.S. 1 (1952); *cf. Ungar v. Sarafite,* 376 U.S. 575 (1964), sustaining punishment for contempt in a post-trial hearing by the trial judge in a state court where the hearing was found to satisfy the requirements of due process. When the conduct charged includes a personal attack on the judge but the situation does not require an immediate disposition, however, the potentiality of prejudice to the defendant raises serious due process questions and invites reversal on review by an appellate court of punishment meted out by the accusing judge in a postponed proceeding. See, *e.g., Mayberry v. Pennsylvania,* 400 U.S. 455 (1971); *Offutt* v. *United States,* 348 U.S. 11 (1954). See also 8A Moore 42–23 (1969); 3 Wright, *Federal Practice and Procedure—Criminal* § 707 (1969; Note, 73 Harv.L.Rev. 353, 362 (1959).

Subdivision (b) of this rule is declaratory of existing law. See *Marcus v. Pennsylvania Trust Co.,* 23 F.2d 303, 304 (3d Cir. 1927); *Biderman v. Cooper,* 273 Fed. 683 (3d Cir. 1921).

Subdivision (c) clarifies the intent in the rules to recognize and give effect to the guaranty of a jury trial in any proceeding for criminal contempt in which a punishment by imprisonment of 6 months or more is imposed. *Frank* v. *United States,* 395 U.S. 147 (1969).

Rule 921. Entry of Judgment; District Court Record of Referee's Judgment.

(a) Original Entry on Referee's Docket.

A judgment in an adversary proceeding or contested matter shall be set forth on a separate document. Every judgment shall be entered forthwith in the referee's docket as provided in Rule 504 or, if the judgment is by the district judge, in the civil docket as provided in Rule 79(a) of the Federal Rules of Civil Procedure. A judgment is effective only when entered as required by this subdivision.

(b) District Court Record of Referee's Judgment.

On certification by the referee to the clerk of the district court of a copy of a judgment of the referee for the recovery of money or property, the clerk shall keep and index the copy in substantially the form and manner prescribed by Rule 79 of the Federal Rules of Civil Procedure for judgments of the district court. Retention and indexing of a judgment by the clerk under this subdivision shall not affect its appealability or proceedings on appeal from the judgment under the rules in Part VIII, the availability of process to enforce the judgment under Rule 769, or the availability of relief under Rule 762 or 770, but after it has been so indexed, the referee's judgment shall have the same effect and may be enforced as a judgment of the district court so indexed.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (a) is derived from Rule 58 of the Federal Rules of Civil Procedure. The appropriateness of applying Civil Rule 58 in bankruptcy cases has geen generally recognized. *In re California Associated Products Co.,* 183 F.2d 946, 949 (9th Cir. 1950); *In re D'Arcy,* 142 F.2d 313, 315 (3d Cir. 1944); *Rosenberg v. Heffron,* 131 F.2d 80 (9th Cir. 1942); 6A Moore ¶ 58.03[2] (1953). "Judgment" is defined in Rule 901(8) to include an appealable order. The purpose of the separate document requirement is to eliminate uncertainty as to whether an opinion or memorandum of the court constitutes a judgment if and when entered on the docket. See Advisory Committee Comment on the 1963 amendment of Rule 58 of the Federal Rules of Civil Procedure; 6A Moore ¶¶ 58.01[8], 58.02 (1969 supp.). The form and content of the separate document contemplated by Civil Rule 58 are illustrated by Forms 31 and 32 accompanying the Federal Rules of Civil Procedure. Neither the considerations underlying the requirement of a separate document by Civil Rule 58 nor sound bankruptcy administration warrants requiring orders entered on *ex parte* applications to be evidenced by a separate document.

Subdivision (b) establishes a procedure for entering a referee's judgment for the recovery of money or property in an index of judgments kept by the clerk of the district court and clarifies the availability of the same remedies for the enforcement of such a judgment as those provided for the enforcement of a like judgment of the district court. See 28 U.S.C. §§ 1961–63. The procedure prescribed conforms to the practice followed under local rules in some districts. See Gendel, *Jurisdiction of a Referee in Bankruptcy to Render Affirmative Judgements on a Counterclaim in Favor of a Trustee,* 26 So. Cal. L. Rev. 167, 170 (1953) (referring to Bankruptcy Rule 213 of the Southern District of California). When indexed in accordance with subdivision (b) of this rule, the referee's judgment may be found by anyone searching for liens of record in the judgment records of the district court, and certification of the copy of the referee's judgment to the clerk provides a basis for registration of the judgment pursuant to 28 U.S.C. § 1963 in any other district. When so registered, the judgment may be enforced by issuance of execution and orders for supplementary proceedings that may be served anywhere within the state where the registering court sits. See 7 Moore 2409–11 (1971). The procedures available in the district court are not exclusive, however, and the holder of a referee's judgment retains the option to rely on his remedies under Rules 769 and 770 notwithstanding the indexing of the judgment by the clerk of the district court.

Rule 922. Notice of Judgment or Order.

(a) Judgment or Order of a Referee.

Immediately upon the entry of a judgment or order made by him, the referee shall serve a notice of the entry by mail in the manner provided by Rule 705 upon any party who opposed the making of the judgment or order and on such other persons as may be designated by the referee. The service of such notice shall be noted in the referee's docket. Lack of notice of the entry does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted in Rule 802.

(b) Judgment or Order of District Judge.

Notice of a judgment or order of a district judge while acting in a bankruptcy case pursuant to Rule 102 is governed by Rule 77(d) of the Federal Rules of Civil Procedure.

Notes of Advisory Committee on Rules

Subdivision (a) of this rule is an adaptation of Rule 77(d) of the Federal Rules of Civil Procedure, which is made directly applicable by subdivision (b) of this Bankruptcy Rule to the notice of the entry of a judgment or order of the district judge when he acts as a bankruptcy judge. The referee's docket referred to in the second sentence of subdivision (a) of this Bankruptcy Rule is prescribed by Rule 504(a).

Subdivision (a)–(c) of Rule 77 of the Federal Rules of Civil Procedure have been adapted for the purposes of bankruptcy administration in Bankruptcy Rule 501.

Rule 923. New Trials; Amendment of Judgments.

Except as provided in Rule 307, Rule 59 of the Federal Rules of Civil Procedure applies in bankruptcy cases.

Notes of Advisory Committee on Rules

Rule 59 of the Federal Rules of Civil Procedure has generally been deemed applicable to a "petition for rehearing" of an order entered in bankruptcy cases. See, *e.g., Claybrook Drilling Co.* v. *Divanco, Inc.,* 336 F.2d 697, 700 (10th Cir. 1964) (petition for rehearing of orders invalidating security interest, reducing unsecured claim, and refusing to compel compliance with Chapter X plan held timely under Fed.R.Civ.P. 59(b)); *In re Marachowsky Stores Co.,* 188 F.2d 686, 688–89 (7th Cir. 1951) (motion for rehearing of orders dismissing involuntary bankruptcy petition and directing payment of fees and expenses to custodian held not timely under Fed.R.Civ. P. 59(b) and denial thereof not appealable); Copenhaver, *Rehearing and Review in Bankruptcy,* 42 Ref.J. 101, 103 (1968). But *cf. American United Life Ins. Co.* v. *Haines City, Fla.,* 117 F.2d 574, 576 (5th Cir. 1941) (Fed.R.Civ.P. 59 deemed inapplicable to order confirming a plan under Chapter IX of the Act); 2 Collier ¶ 25.07[2] (1969); 6A Moore ¶ 59.04[12] (1954). This rule resolves the doubts as to the applicability of the rule in bankruptcy, but it does not restrict the discretion vested in the court by Rule 307 to reconsider an order allowing or disallowing a claim.

Rule 924. Relief from Judgment or Order.

Rule 60 of the Federal Rules of Civil Procedure applies in bankruptcy cases, except that a motion to reopen a case or for the reconsideration of an order allowing or disallowing a claim against the estate entered without a contest is not subject to the one-year limitation herein prescribed. This rule does not permit extension of the time allowed by §15 of the Act for the filing of a complaint to revoke a discharge.

Notes of Advisory Committee on Rules

The applicability of Rule 60(a) of the Federal Rules of Civil Procedure in bankruptcy cases has been generally accepted. See, *e.g., Crosby* v. *Pacific S.S. Lines, Ltd.,* 133 F.2d 470, 473 (9th Cir. 1943). It has frequently been doubted, and sometimes denied, that subdivision (b) of this rule applies in bankruptcy. See, *e.g., Conway* v. *Union Bank of Switzerland,* 204 F.2d 603, 609 (2d Cir. 1953); 1 Collier ¶ 2.12[2.1] (1968); 7 Moore ¶ 60.18[7] (1954). Most of the cases refusing to apply the rule, however, involved no more than a disregard of the 6-month limitation on the availability of relief under subdivision (b) as it read before amendment in 1946. See, *e.g., Indemnity Ins. Co.* v. *Reisley,* 153 F.2d 296, 299 (2d Cir. 1945), cert. denied, 328 U.S. 857 (1946), where an order awarding a lien to a creditor was held subject to reconsideration 3 years after its entry; *In re Barnett,* 124 F.2d 1005 (2d Cir. 1942), where the court allowed relief from an order invalidating a transfer notwithstanding lapse of the period for seeking relief under Fed.R.Civ.P. 60(b). The amendment of 1946 adopted a one-year limitation in lieu of the original time prescription and specified a number of new grounds for relief, some of which are not subject to the one-year bar. Except for motions to reopen cases and to reconsider uncontested orders of allowance and disallowance of claims, the limitations prescribed by Rule 60(b) on the availability of relief by motion from a judgment or order are now entirely appropriate in bankruptcy cases. *Cromelin* v. *Markwalter,* 181 F.2d 948, 949 (5th Cir. 1950); *Norris* v. *Camp,* 144 F.2d 1, 4 (10th Cir. 1944); *cf. Grand Union Equipment Co.* v. *Lippner,* 167 F.2d 958, 961 (2d Cir. 1948). Motions to reopen cases are governed by Rule 515. Reconsideration of orders allowing and disallowing claims is governed by Rule 307.

These rules do not preserve the features of the practice pertaining to so-called "administrative orders," which have been regarded as subject at any time to reconsideration by the referee or to review by the district court without regard to the limitations of § 39c of the Act. See, *e.g., Flaxman, Coleman, Gorman & Rosoff* v. *Cheek,* 355 F.2d 672, 674 (9th Cir.), cert. denied, 384 U.S. 954 (1966);

Fazakerly v. *E. Kahn's Sons Co.*, 75 F.2d 110 (5th Cir. 1935); 2 Collier ¶ 39.18 (1968).

Cases holding that a bankrupt who was not served personally is absolutely entitled to have an adjudication by default set aside within a year thereafter (*In re Mistrot*, 147 F.Supp. 423 (S.D.Tex. 1956), aff'd sub nom. *Hollywood Youths, Inc.* v. *Mistrot*, 246 F.2d 399 (5th Cir. 1957); *In re Miller*, 262 F.Supp. 295 (E.D.Ill. 1967)) do not apply to adjudications entered in accordance with these rules. These cases rested on a doubtful construction of 28 U.S.C. § 1655, which was deemed applicable by virtue of the language of § 18a of the Bankruptcy Act. See Seligson, *Creditors' Rights* in *1967 Ann. Survey of American Law* 425–27 (1968). Rule 111, which governs service in involuntary proceedings, does not incorporate this provision of the Judicial Code.

The last sentence of the rule makes clear that it affords no basis for circumvention of the time limitations prescribed by § 15 of the Act for the commencement of any proceeding to revoke a discharge. *Cf. Gerber* v. *Fruchter*, 147 F.2d 120, 122 (2d Cir. 1945).

Rule 925. Security: Proceedings Against Sureties.

Whenever these rules require or permit the giving of security by a party, and security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits himself to the jurisdiction of the court, and his liability may be enforced in an adversary proceeding governed by the rules in Part VII.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is an adaptation of Rule 65.1 of the Federal Rules of Civil Procedure but assimilates the proceeding to enforce liability on a bond to the adversary proceedings governed by Part VII. This rule applies to any surety on a bond given pursuant to Rule 201, 212, 512, 762, 765, 805, or any other rule authorizing the giving of such security. Jurisdiction of the subject matter of such a proceeding is conferred by § 50n of the Act.

Rule 926. Exceptions Unnecessary.

Rule 46 of the Federal Rules of Civil Procedure applies in bankruptcy cases.

Rule 927. Local Bankruptcy Rules.

Each district court by action of a majority of the judges thereof may from time to time make and amend rules governing practice and procedure under the Act not inconsistent with these rules. Copies of rules and amendments so made shall upon their promulgation be furnished to the Administrative Office of the United States Courts. The clerk of each court shall make appropriate arrangements, subject to the approval of the Director of the Administrative Office of the United States Courts, for making copies of such rules available to members of the public who may request them. In all cases not provided for by rule, the district court may regulate its practice in any manner not inconsistent with these rules.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is an adaptation of Rule 83 of the Federal Rules of Civil Procedure and Rule 57(a) of the Federal Rules of Criminal Procedure. Distribution requirements applicable to copies of local bankruptcy rules heretofore imposed by General Order 56 have been simplified in recognition of the fact that the Administrative Office of the United States Courts is the logical centralized repository of such rules for official use and reference and that the clerk of each district court is the appropriate officer to charge with the responsibility for meeting local needs and requests from the public.

Rule 928. Jurisdiction Unaffected.

These rules shall not be construed to extend or limit the jurisdiction of courts of bankruptcy over subject matter.

NOTES OF ADVISORY COMMITTEE ON RULES

An unexpressed limitation on the grant of rule-making power by 28 U.S.C. § 2075, pursuant to which these rules are promulgated, is made explicit by this rule. *Cf.* Fed.R.Civ.P. 82; *United States* v. *Sherwood*, 312 U.S. 584, 590–91 (1941); 7 Moore 4602 (1954).

OFFICIAL BANKRUPTCY FORMS

Form
1. Petition for Voluntary Bankruptcy.
2. Application To Pay Filing Fees in Installments.
3. Order For Payment of Filing Fees in Installments.
4. Verification on Behalf of a Corporation.
5. Verification on Behalf of a Partnership.
6. Schedules.
7. Statement of Affairs for Bankrupt Not Engaged in Business.
8. Statement of Affairs for Bankrupt Engaged in Business.
9. Creditors' Petition for Bankruptcy.
10. Summons to Bankrupt.
11. Adjudication of Bankruptcy.
12. Order for First Meeting of Creditors and Related Orders, Combined With Notice Thereof and of Automatic Stay.
13. General Power of Attorney.
14. Special Power of Attorney.
15. Proof of Claim.
16. Proof of Claim for Wages, Salary, or Commissions.
16A. Proof of Multiple Claims for Wages, Salary, or Commissions.
17. Order Approving Election of Trustee or Appointing Trustee and Fixing the Amount of His Bond.
18. Notice to Trustee of His Election or Appointment and of Time Fixed for Filing a Complaint Objecting to Discharge of Bankrupt.
19. Bond of Trustee or Receiver.
20. Order Approving Trustee's Bond.
21. Order that no Trustee be Appointed.
22. Report of Exempt Property.
23. Order Approving Report of Exemptions.
24. Discharge of Bankrupt.
25. Caption for Adversary Proceeding.
26. Summons and Notice of Trial of Adversary Proceeding.
27. Subpoena to Witness.
28. Notice of Appeal to a District Court from a Judgment or Order of a Referee Entered in Adversary Proceeding.
29. Order and Notice for Final Meeting of Creditors.
30. Report of Trustee in No-Asset Case.

[NOTE. These official forms should be observed and used with such alterations as may be appropriate to suit the circumstances. See Rule 909.]

ABROGATION OF FORMS

The following Official Forms in Bankruptcy, set out in the 1970 edition of the Code, were abrogated, effective Oct. 1, 1973, by order of the United States Supreme Court, dated Apr. 24, 1973: Forms 1 to 13, inclusive, 15 to 20, inclusive, 22 to 52, inclusive, 58 to 62, inclusive, and 70 to 72, inclusive. For new Official Bankruptcy Forms, effective Oct. 1, 1973, covering chapters 1 to 7 and 13 of the Bankruptcy Act [sections 1 to 112 and 1001 to 1086 of this title] see forms set out hereunder.

FORM 1. PETITION FOR VOLUNTARY BANKRUPTCY.

United States District Court for the ______ District of ______

In re
______________,
Bankrupt [*include here all names used by bankrupt within last 6 years*]
Bankruptcy No. __________

VOLUNTARY PETITION

1. Petitioner's post-office address is ____________

2. Petitioner has resided [*or* has had his domicile *or* has had his principal place of business] within this district for the preceding 6 months [*or* for a longer portion of the preceding 6 months than in any other district].

3. Petitioner is qualified to file this petition and is entitled to the benefits of the Bankruptcy Act as a voluntary bankrupt.

Wherefore petitioner prays for relief as a voluntary bankrupt under the Act.

Signed: ______ ______,
Attorney for Petitioner.
Address: ____________,
____________,
[*Petitioner signs if not represented by attorney.*]
______ ______,
Petitioner.

State of ______________ } *ss.*
County of ____________ }

I, ______ ______, the petitioner named in the foregoing petition, do hereby swear that the statements contained therein are true according to the best of my knowledge, information, and belief.

______ ______,
Petitioner.

Subscribed and sworn to before me on __________ ______________.

______ ______,
______ ______
[*Official character.*]

[*Unless further time is granted by the court pursuant to Rule 108, this petition must be accompanied by a schedule of the petitioner's debts and property, his claim for such exemptions as he may be entitled to, and a statement of his affairs. These additional statements shall be submitted on official forms, shall include the information about the petitioner's property and debts required by the Bankruptcy Rules and by the forms, and shall be verified under oath.*]

NOTES OF ADVISORY COMMITTEE ON RULES

This form is a revision of Official Form No. 1. Numerous changes have been made in the interest of eliminating unnecessary words and reducing the number of formal entries to be made by the petitioner.

Rule 106 requires the caption in which the name of the bankrupt is given to include all the names used by him within 6 years before the filing of the petition.

The recitals in paragraph 2 of the form, which establish the venue for the case, include the possibilities that are appropriate for most petitioners. Other factual bases for choice of venue under Rule 116(a) may be shown by minor adaptations of the form.

References to the schedules and claim for exemptions, which are not part of the petition, are stricken from the body of the form, but a note at the foot of the form calls the petitioner's attention to the necessity of filing these accompanying papers and the statement of affairs as provided in Rule 108.

Blanks for the signature and address of the petitioner's attorney are added in conformity with Rule 911(a). Only the original need be signed and verified, but the copies should be conformed to the original. See Rule 911(c). Verification of a petition on behalf of a corporation by an officer or agent, or of a petition on behalf of a partnership by a member or agent should conform to Official Form No. 4 or 5 whichever is appropriate.

FORM 2. APPLICATION TO PAY FILING FEES IN INSTALLMENTS.

[*Caption, other than designation, as in Form No. 1*]

APPLICATION TO PAY FILING FEES IN INSTALLMENTS

1. Applicant is filing herewith a voluntary petition in bankruptcy.

2. He is unable to pay the filing fees except in installments.

3. He proposes to pay such fees to the clerk of the district court upon the following terms:
____
____

4. He has paid no money and transferred no property to his attorney for services in connection with this case or any pending case under the Act, and he will make no payment or transfer to his attorney for such services until the filing fees are paid in full.

Wherefore applicant prays that he be permitted to pay the filing fees in installments.

Dated: ____________

Signed: ______ ______,
Applicant.
Address: ____________,
____

NOTES OF ADVISORY COMMITTEE ON RULES

This form is new. The application for permission to pay filing fees in installments may be filed in accordance with Rule 107(b).

FORM 3. ORDER FOR PAYMENT OF FILING FEES IN INSTALLMENTS.

[*Caption, other than designation, as in Form No. 1*]

ORDER FOR PAYMENT OF FILING FEES IN INSTALLMENTS

The application of the bankrupt for permission to pay the filing fees in this case in installments having been heard;

It is ordered that the bankrupt pay the filing fees still owing, namely, $______, as follows: ____________
____
____

It is further ordered that all payments be made at the office of the clerk of the United States District Court located at ___________, and that until the filing fees are paid in full, the bankrupt shall pay no money and shall transfer no property to his attorney, and his attorney shall accept no money or property from the bankrupt for services in connection with this case.

Dated: ____________

------ ------,
Bankruptcy Judge.

NOTES OF ADVISORY COMMITTEE ON RULES

This form is new. Issuance of an order permitting payment of filing fees in installments is governed by Rule 107(b).

FORM 4. VERIFICATION ON BEHALF OF A CORPORATION.

State of ______________ } ss.
County of ____________ }

I, ------ ------, the president [*or other officer or* an authorized] agent of the corporation named as petitioner in the foregoing petition, do hereby swear that the statements contained therein are true according to the best of my knowledge, information, and belief, and that the filing of this petition on behalf of the corporation has been authorized.

------ ------

Subscribed and sworn to before me on __________.

------ ------,
------ ------
[*Official character*]

NOTES OF ADVISORY COMMITTEE ON RULES

Rule 109 requires all petitions to be verified. This form is to be used for the verification on behalf of a corporation. It may be adapted for use in connection with other papers required by these rules to be verified. See the Note to Rule 911.

FORM 5. VERIFICATION ON BEHALF OF A PARTNERSHIP.

State of ______________ } ss.
County of ____________ }

I, ------ ------, a member [*or* an authorized agent] of the partnership named as petitioner in the foregoing petition, do hereby swear that the statements contained therein are true according to the best of my knowledge, information, and belief, and that the filing of this petition on behalf of the partnership has been authorized.

------ ------

Subscribed and sworn to before me on __________.

------ ------,
------ ------
[*Official character*]

NOTES OF ADVISORY COMMITTEE ON RULES

Rule 109 requires all petitions to be verified. This form is to be used for the verification on behalf of a partnership. It may be adapted for use in connection with other papers required by these rules to be verified. See the Note to Rule 911.

FORM 6. SCHEDULES.

[*Caption, other than designation, as in Form No. 1*]

SCHEDULE A.—STATEMENT OF ALL DEBTS OF BANKRUPT

Schedules A-1, A-2, and A-3 must include all the claims against the bankrupt or his property as of the date of the filing of the petition by or against him.

SCHEDULE A-1.—CREDITORS HAVING PRIORITY.

Nature of claim	Name of creditor and residence of place of business [if unknown, so state]	Specify when claim was incurred and the consideration therefor; when claim is contingent, unliquidated, disputed, or subject to setoff, evidenced by a judgment, negotiable instrument, or other writing, or incurred as partner or joint contractor, so indicate; specify name of any partner or joint contractor on any debt	Amount of claim
a. Wages and commissions owing to workmen, servants, clerks, or traveling or city salesmen on salary or commission basis, whole or part time, whether or not welling exclusively for the bankrupt, not exceeding $600 to each, earned within 3 months before filing of petition			$
b. Taxes owing [itemize by type of tax and taxing authority] (1) To the United States (2) To any state (3) To any other taxing authority			
c. (1) Debts owing to any person, including United States, entitled to priority by laws of United States [itemize by type]			
(2) Rent owing to a landlord entitled to priority by laws of any state accrued within 3 months before filing of petition, for actual use and occupancy			
		Total __________	

SCHEDULE A-2.—CREDITORS HOLDING SECURITY.

Name of creditor and residence or place of business [if unknown, so state]	Description of security and date when obtained by creditor	Specify when claim was incurred and the consideration therefor; when claim is contingent, unliquidated, disputed, subject to setoff, evidenced by a judgment, negotiable instrument, or other writing, or incurred as partner or joint contractor, so indicate; specify name of any partner or joint contractor on any debt	Market value	Amount of claim without deduction of value of security
			$	$
		Total __________		

SCHEDULE A-3.—CREDITORS HAVING UNSECURED CLAIMS WITHOUT PRIORITY.

Name of creditor [including last known holder of any negotiable instrument] and residence or place of business [if unknown, so state]	Specify when claim was incurred and the consideration therefor; when claim is contingent, unliquidated, disputed, subject to setoff, evidenced by a judgment, negotiable instrument, or other writing, or incurred as partner or joint contractor, so indicate; specify name of any partner or joint contractor on any debt	Amount of claim
		$
	Total __________	

SCHEDULE B.—STATEMENT OF ALL PROPERTY OF BANKRUPT

Schedules B-1, B-2, B-3, and B-4 must include all property of the bankrupt as of the date of the filing of the petition by or against him.

SCHEDULE B–1.—REAL PROPERTY.

Description and location of all real property in which bankrupt has an interest [including equitable and future interests, interests in estates by the entirety, community property, life estates, leaseholds, and rights and powers exercisable for his own benefit]	Nature of interest [specify all deeds and written instruments relating thereto]	Market value of bankrupt's interest without deduction for secured claims listed in Schedule A–2 or exemptions claimed in Schedule B–4
		$
	Total ______	______

SCHEDULE B–2.—PERSONAL PROPERTY.

Type of property	Description and location	Market value of bankrupt's interest without deduction for secured claims listed on Schedule A–2 or exemptions claimed in Schedule B–4
a. Cash on hand		$
b. Deposits of money with banking institutions, savings and loan associations, credit unions, public utility companies, landlords, and others		
c. Household goods, supplies, and furnishings		
d. Books, pictures, and other art objects; stamp, coin, and other collections		
e. Wearing apparel, jewelry, firearms, sports equipment, and other personal possessions		
f. Automobiles, trucks, trailers, and other vehicles		
g. Boats, motors, and their accessories		
h. Livestock, poultry, and other animals		
i. Farming supplies and implements		
j. Office equipment, furnishings, and supplies		
k. Machinery, fixtures, equipment, and supplies [other than those listed in Items j and l] used in business		
l. Inventory		
m. Tangible personal property of any other description		
n. Patents, copyrights, franchises, and other general intangibles [specify all documents and writings relating thereto]		
o. Government and corporate bonds and other negotiable and nonnegotiable instruments		
p. Other liquidated debts owing bankrupt or debtor		
q. Contingent and unliquidated claims of every nature, including counterclaims of the bankrupt or debtor [give estimated value of each]		
r. Interests in insurance policies [itemize surrender or refund values of each]		
s. Annunities		
t. Stocks and interests in incorporated and unincorporated companies [itemize separately]		
u. Interests in partnerships		
v. Equitable and future interests, life estates, and rights or powers exercisable for the benefit of the bankrupt or debtor [specify all written instruments relating thereto]		
	Total ______	______

SCHEDULE B–3.—PROPERTY NOT OTHERWISE SCHEDULED.

Type of property	Description and location	Market value of bankrupt's interest without deduction for secured claims listed in Schedule A–2 or exemptions claimed in Schedule B–4
a. Property transferred under assignment for benefit of creditors, within 4 months prior to filing of petition [specify date of assignment, name and address of assignee, amount realized therefrom by the assignee, and disposition of proceeds so far as known to bankrupt]		$
b. Property of any kind not otherwise scheduled		
	Total ______	______

SCHEDULE B–4.—PROPERTY CLAIMED AS EXEMPT.

Type of property	Location, description, and, so far as relevant to the claim of exemption, present use of property	Reference to statute creating the exemption	Value claimed exempt
			$
		Total ______	______

Summary of debts and property

[From the statements of the bankrupt in Schedules A and B]

Schedule		Total
	Debts	
A–1/a	Wages having priority	
A–1/b(1)	Taxes owing United States	
A–1/b(2)	Taxes owing states	
A–1/b(3)	Taxes owing other taxing authorities	
A–1/c(1)	Debts having priority by laws of United States	
A–1/c(2)	Rent having priority under state law	
A–2	Secured claims	
A–3	Unsecured claims without priority	
	Schedule A total	______
	Property	
B–1	Real property [total value]	
B–2/a	Cash on hand	
B–2/b	Deposits	
B–2/c	Household goods	
B–2/d	Books, pictures, and collections	
B–2/e	Wearing apparel and personal possessions	
B–2/f	Automobiles and other vehicles	
B–2/g	Boats, motors, and accessories	
B–2/h	Livestock and other animals	
B–2/i	Farming supplies and implements	
B–2/j	Office equipment and supplies	
B–2/k	Machinery, equipment, and supplies used in business	
B–2/l	Inventory	
B–2/m	Other tangible personal property	
B–2/n	Patents and other general intangibles	
B–2/o	Bonds and other instruments	
B–2/p	Other liquidated debts	
B–2/q	Contingent and unliquidated claims	
B–2/r	Interests in insurance policies	
B–2/s	Annuities	
B–2/t	Interests in corporations and unincorporated companies	
B–2/u	Interests in partnerships	
B–2/v	Equitable and future interests, rights, and powers in personalty	
B–3/a	Property assigned for benefit of creditors	
B–3/b	Property not otherwise scheduled	
B–4	Property claimed as exempt $______	
	Schedule B total	______

OATH OF INDIVIDUAL TO SCHEDULES A AND B

State of ______________ }
County of ____________ } *ss.*

I, ______ ______, do hereby swear that I have read the foregoing schedules, consisting of ______, sheets, and that they are a statement of all my debts and all my property in accordance with the Bankruptcy Act, to the best of my knowledge, information, and belief.

Signed: ______ ______

Subscribed and sworn to before me on __________.

______ ______,

______ ______

[*Official character*]

OATH ON BEHALF OF CORPORATION TO SCHEDULES A AND B

State of ______________ }
County of ____________ } *ss.*

I, ______ ______, the president [*or other officer or* an authorized agent] of the corporation named as bankrupt in this proceeding, do hereby swear that I have read the foregoing schedules, consisting of ______ sheets, and that they are a statement of all the debts and all the property of the corporation in accordance with the Bankruptcy Act, to the best of my knowledge, information, and belief.

Signed: ______ ______

Subscribed and sworn to before me on __________.

______ ______,

______ ______

[*Official character*]

OATH ON BEHALF OF PARTNERSHIP TO SCHEDULES A AND B

State of ______________ } ss.
County of ____________ }

I, ______ ______, a member [*or* an authorized agent] of the partnership named as bankrupt in this proceeding, do hereby swear that I have read the foregoing schedules, consisting of ______ sheets, and that they are a statement of all the debts and all the property of the partnership in accordance with the Bankruptcy Act, to the best of my knowledge, information, and belief.

Signed: ______ ______

Subscribed and sworn to before me on __________.

______ ______,
______ ______
[*Official character*]

NOTES OF ADVISORY COMMITTEE ON RULES

This form is a revision of the Official forms for Schedules A and B accompanying Official Form No. 1. It is intended for use by the bankrupt, or whoever may be required to prepare a schedule of property and list of creditors to accompany a petition filed under the Act. See Rule 108.

The number of schedules of debts has been reduced from 5 to 3 and the number of schedules of property from 6 to 4 in the interest of simplification. No significant change in the information required to be disclosed is intended by ths reduction. Numerous changes of format have been made to permit easier adaptability for individual cases, and columnar headings and categories of claims and property have been revised to make them more comprehensive and clear.

Ledger or voucher references and identification of places where debts were contracted or incurred are no longer required to be entered on the schedules of his debts. To elimnate an overlap of Schedule A–2 with Schedule B–1, which has required inclusion of information as to encumbrances on real property of the estate, the headings in the latter schedule have been revised to make clear that all statements regarding secured claims are to be entered in Schedule A–2. Liabilities on notes and bills heretofore supposed to be entered on Schedule A–4 and A–5 are to be included in Schedule A–3 or, if the creditor is entitled to priority or is secured, on Schedule A–1 or A–2, as the case may be. Elimination of Schedules A–4 and A–5 will effect little or no change in practice.

Schedule B–3, on which choses in action belonging to the estate have heretofore been scheduled, has been merged into Schedule B–2 for personal property, thereby eliminating a needless classification. The space provided in Schedule B–4 for "Property in reversion, remainder, or expectancy, including property held in trust for the debtor or subject to any power or right to dispose of or to charge" has been eliminated, and such property should be included as real property on Schedule B–1 or as personal property on Schedule B–2. Information as to fees paid counsel in contemplation of bankruptcy, heretofore also required to be included in Schedule B–4, is to be obtained by questions included in the Statement of Affairs.

The official forms for the schedules have heretofore required a signature on each of the 11 schedules (A–1 to A–5 and B–1 to B–6) and an oath to accompany the Schedule of Debts as well as another to accompany the Schedule of Property. Schedules are required to be executed and filed in the same number as the petition they accompany. Rule 108(a). A single oath for all the schedules requiring no more than one signature by the bankrupt for the original has been substituted for the multiple subscription requirements heretofore imposed. The oath requires a specification of the number of sheets included in the schedules and an acknowledgment that the affiant has read them. The copies should be conformed to the original as provided in Rule 911(c). Separate forms of oath are provided for individuals, corporations, and partnerships.

FORM 7. STATEMENT OF AFFAIRS FOR BANKRUPT NOT ENGAGED IN BUSINESS.

[*Caption, other than designation, as in Form No. 1.*]

STATEMENT OF AFFAIRS FOR BANKRUPT NOT ENGAGED IN BUSINESS

[Each question should be answered or the failure to answer explained. If the answer is "none," this should be stated. If additional space is needed for the answer to any question, a separate sheet, properly identified and made a part hereof, should be used and attached.

The term, "original petition," as used in the following questions, shall mean the petition filed under Bankruptcy Rule 103, 104, or 105.]

1. Name and residence.

a. What is your full name and social security number?

b. Have you used, or been known by, any other names within the 6 years immediately preceding the filing of the original petition herein? (If so, give particulars.)

c. Where do you now reside?

d. Where else have you resided during the 6 years immediately preceding the filing of the original petition herein?

2. Occupation and income.

a. What is your occupation?

b. Where are you now employed? (Give the name and address of your employer, or the address at which you carry on your trade or profession, and the length of time you have been so employed.)

c. Have you been in a partnership with anyone, or engaged in any business during the 6 years immediately preceding the filing of the original petition herein? (If so, give particulars, including names, dates, and places.)

d. What amount of income have you received from your trade or profession during each of the 2 calendar years immediately preceding the filing of the original petition herein?

e. What amount of income have you received from other sources during each of these 2 years? (Give particulars, including each source, and the amount received therefrom.)

3. Tax returns and refunds.

a. Where did you file your last federal and state income tax returns for the 2 years immediately preceding the filing of the original petition herein?

b. What tax refunds (income and other) have you received during the year immediately preceding the filing of the original petition herein?

c. To what tax refunds (income or other), if any, are you, or may you be, entitled? (Give particulars, including information as to any refund payable jointly to you and your spouse or any other person.)

4. Bank accounts and safe deposit boxes.

a. What bank accounts have you maintained, alone or together with any other person, and in your own or any other name within the 2 years immediately preceding the filing of the original petition herein? (Give the name and address of each bank, the name in which the deposit maintained, and the name and address of every other person authorized to make withdrawals from such account.)

b. What safe deposit box or boxes or other depository or depositories have you kept or used for your securities, cash, or other valuables within the 2 years immediately preceding the filing of the original petition herein? (Give the name and address of the bank or other depository, the name in which each box or other depository was kept, the name and address of every other person who had the right of access thereto, a brief description of the contents thereof, and, if the box has been surrendered, state when surrendered, or, if transferred, when transferred, and the name and address of the transferee.

5. Books and records.

a. Have you kept books of account or records relating to your affairs within the 2 years immediately preceding the filing of the original petition herein?

b. In whose possession are these books or records? (Give names and addresses.)

c. If any of these books or records are not available, explain.

d. Have any books of account or records relating to your affairs been destroyed, lost, or otherwise disposed of within the 2 years immediately preceding the filing of the original petition herein? (If so, give particulars, including date of destruction, loss or, disposition, and reason therefor.)

6. Property held for another person.

What property do you hold for any other person? (Give name and address of each person, and describe the property, or value thereof, and all writings relating thereto.)

7. Prior bankruptcy.

What proceedings under the Bankruptcy Act have previously been brought by or against you? (State the location of the bankruptcy court, the nature and number of each proceeding, the date when it was filed, and whether a discharge was granted or refused, the proceeding was dismissed, or a composition, arrangement, or plan was confirmed.)

8. Receiverships, general assignments, and other modes of liquidation.

a. Was any of your property, at the time of the filing of the original petition herein, in the hands of a receiver, trustee, or other liquidating agent? (If so, give a brief description of the property, the name and address of the receiver, trustee, or other agent, and, if the agent was appointed in a court proceeding, the name and location of the court and the nature of the proceeding.)

b. Have you made any assignment of your property for the benefit of your creditors, or any general settlement with your creditors, within one year immediately preceding the filing of the original petition herein? (If so, give dates, the name and address of the assignee, and a brief statement of the terms of assignment or settlement.)

9. Property in hands of third person.

Is any other person holding anything of value in which you have an interest? (Give name and address, location and description of the property, and circumstances of the holding.)

10. Suits, executions, and attachments.

a. Were you a party to any suit pending at the time of the filing of the original petition herein? (If so, give the name and location of the court and the title and nature of the proceeding.)

b. Were you a party to any suit terminated within the year immediately preceding the filing of the original petition herein? (If so, give the name and location of the court, the title and nature of the proceeding, and the result.)

c. Has any of your property been attached, garnished, or seized under any legal or equitable process within the 4 months immediately preceding the filing of the original petition herein? (If so, describe the property seized or person garnished, and at whose suit.)

11. Loans repaid.

What repayments on loans in whole or in part have you made during the year immediately preceding the filing of the original petition herein? (Give the name and address of the lender, the amount of the loan and when received, the amounts and dates of payments and, if the lender is a relative, the relationship.)

12. Transfers of property.

a. Have you made any gifts, other than ordinary and usual presents to family members and charitable donations, during the year immediately preceding the filing of the original petition herein? (If so, give names and addresses of donees and dates, description, and value of gifts.)

b. Have you made any other transfer, absolute or for the purpose of security, or any other disposition, of real or tangible personal property during the year immediately and preceding the filing of the original petition herein? (Give a description of the property, the date of the transfer or disposition, to whom transferred or how disposed of, and, if the transferee is a relative, the relationship, the consideration, if any, received therefor, and the disposition of such consideration.)

13. Repossessions and returns.

Has any property been returned to, or repossessed by, the seller or by a secured party during the year immediately preceding the filing of the original petition herein? (If so, give particulars including the name and address of the party getting the property and its description and value.)

14. Losses.

a. Have you suffered any losses from fire, theft, or gambling during the year immediately preceding or since the filing of the original petition herein? (Give date, name, and address.)

b. Have you during the year immediately preceding or since the filing of the original petition herein paid any money or transferred any property to the attorney or to any other person on his behalf? (If so, give particulars, including amount paid or value of property transferred and date of payment or transfer.)

c. Have you, either during the year immediately preceding or since the filing of the original petition herein, agreed to pay any money or transfer any property to an attorney at law, or to any other person on his behalf? (If so, give particulars, including amount and terms of obligation.)

State of ------------ }
County of ------------ } *ss.*

I, ------ ------, do hereby swear that I have read the answers contained in the foregoing statement of affairs and that they are true and complete to the best of my knowledge, information, and belief.

------ ------
Bankrupt.

Subscribed and sworn to before me on ----.

------ ------,
------ ------
[*Official character*]

NOTES OF ADVISORY COMMITTEE ON RULES

This Statement of Affairs is a revision of Official Form No. 2. Most of the changes are intended to make the requests for information more specific and certain in their references. Thus, the bankrupt is required to give his social security number to facilitate his identification, particularly by the Internal Revenue Service and other agencies which maintain records by reference to this number. Information as to other names used in the last 6 years serves a similar purpose.

Inquiry as to most transactions and developments affecting the financial condition of the bankrupt is limited to the year preceding the filing of the petition, and the time span covered by the question regarding general assignments and other modes of general settlement with creditors (formerly #7c, renumbered as #8b) has been reduced from 2 years to one year. The scope of examination at the first meeting or at any other meeting is in no way restricted, of course, by the scope of the inquiries in the Statement of Affairs.

New questions have been added concerning tax refunds (#3), property in the hands of trustees, bailees, and other third persons (#9), repossessions and returns of property by the bankrupt (#13), losses covered by insurance (#14), and payments or transfers to attorneys (#15). The questions asked in this last paragraph seek information relevant to the examination authorized to be conducted by the court pursuant to Rule 220. The reference to sums paid to counsel heretofore included in Schedule B–4 is deleted by this series of proposals.

The question regarding transfers (formerly #10a, now #12a & b) has literally required the bankrupt to disclose every payment as well as exchange of property during the preceding year. The question has been revised to develop information only as to (1) gifts that exceed the bounds of ordinary and usual presents to family members and charitable contributions, and (2) transfers of realty or tangible personality. The range of inquiry covers the year before the filing of the petition as before, but no accounting is required by the question as to payments of cash and by check except when out-of-the-ordinary gifts are effected in this way.

Inquiry is made as to relevant writings in numerous instances. Schedule B–6 on which all books, papers, and writings, have heretofore been listed has been deleted.

The bankrupt is required to sign only the oath to the statement, but he must verify that he has read the statement as well as that it is true to the best of his knowledge, information, and belief. When the schedules and statement of affairs are filed simultaneously, as they ordinarily will be (see Rule 108(b)), the oaths may be combined, as provided in Rule 909. Only the original need be signed and verified, but the copies must be conformed to the original. See Rule 911(c).

FORM 8. STATEMENT OF AFFAIRS FOR BANKRUPT ENGAGED IN BUSINESS.

[*Caption, other than designation, as in Form No. 1*]

STATEMENT OF AFFAIRS FOR BANKRUPT ENGAGED IN BUSINESS

[Each question should be answered or the failure to answer explained. If the answer is "none," this should be stated. If additional space is needed for the answer to any question, a separate sheet properly identified and made a part hereof, should be used and attached.

If the bankrupt is a partnership or a corporation, the questions shall be deemed to be addressed to, and shall be answered on behalf of, the partnership or corporation; and the statement shall be verified by a member of the partnership or by a duly authorized officer of the corporation.

The term, "original petition," as used in the following questions, shall mean the petition filed under Bankruptcy Rule 103, 104, or 105.]

1. Nature, location, and name of business.

a. Under what name and where do you carry on your business?

b. In what business are you engaged? (If business operations have been terminated, give the date of such termination.)

c. When did you commence such business?

d. Where else, and under what other names, have you carried on business within the 6 years immediately preceding the filing of the original petition herein? (Give street addresses, the names of any partners, joint adventurers, or other associates, the nature of the business, and the periods for which it was carried on.)

e. What is your employer identification number? Your social security number?

2. Books and records.

a. By whom, or under whose supervision, have your books of account and records been kept during the 2 years immediately preceding the filing of the original petition herein? (Give names, addresses, and periods of time.)

b. By whom have your books of account and records been audited during the 2 years immediately preceding the filing of the original petition herein? (Give names, addresses, and dates of audits.)

c. In whose possession are your books of account and records? (Give names and addresses.)

d. If any of these books or records are not available, explain.

e. Have any books of account or records relating to your affairs been destroyed, lost, or otherwise disposed or within the 2 years immediately preceding the filing of the original petition herein? (If so, give particulars, including date of destruction, loss, or disposition, and reason therefor.)

3. Financial statements.

Have you issued any written financial statements within the 2 years immediately preceding the filing of the original petition herein? (Give dates, and the names and addresses of the persons to whom issued, including mercantile and trade agencies.)

4. Inventories.

a. When was the last inventory of your property taken?

b. By whom, or under whose supervision, was this inventory taken?

c. What was the amount, in dollars, of the inventory? (State whether the inventory was taken at cost, market, or otherwise.)

d. When was the next prior inventory of your property taken?

e. By whom, or under whose supervision, was this inventory taken?

f. What was the amount, in dollars, of the inventory? (State whether the inventory was taken at cost, market, or otherwise.)

g. In whose possession are the records of the 2 inventories above referred to? (Give names and addresses.)

5. Income other than from operation of business.

What amount of income, other than from operation of your business, have you received during each of the 2 years immediately preceding the filing of the original petition herein? (Give particulars, including each source, and the amount received therefrom.)

6. Tax returns and refunds.

a. In whose possession are copies of your federal and state income tax returns for the 3 years immediately preceding the filing of the original petition herein?

b. What tax refunds (income or other) have you received during the 2 years immediately preceding the filing of the original petition herein?

c. To what tax refunds (income or other), if any, are you, or may you be, entitled? (Give particulars, including information as to any refund payable jointly to you and your spouse or any other person.)

7. Bank accounts and safe deposit boxes.

a. What bank accounts have you maintained, alone or together with any other person, and in your own or any other name, within the 2 years immediately preceding the filing of the original petition herein? (Give the name and address of each bank, the name in which the deposit was maintained, and the name and address of every person authorized to make withdrawals from such account.)

b. What safe deposit box or boxes or other depository or depositories have you kept or used for your securities, cash, or other valuables within the 2 years immediately preceding the filing of the original petition herein? (Give the name and address of the bank or other depository, the name in which each box or other depository was kept, the name and address of every person who had the right of access thereto, a description of the contents thereof, and, if the box has been surrendered, state when surrendered or, if transferred, when transferred and the name and address of the transferee.)

8. Property held for another person.

What property do you hold for any other person? (Give name and address of each person, and describe the property, the amount or value thereof and all writings relating thereto.)

9. Prior bankruptcy proceedings.

What proceedings under the Bankruptcy Act have previously been brought by or against you? (State the location of the bankruptcy court, the nature and number of proceeding, and whether a discharge was granted or refused, the proceeding was dismissed, or a composition, arrangement, or plan was confirmed.

10. Receiverships, general assignments, and other modes of liquidation.

a. Was any of your property, at the time of the filing of the original petition herein, in the hands of a receiver, trustee, or other liquidating agent? (If so, give a brief description of the property and the name and address of the receiver, trustee, or other agent, and, if the agent was appointed in a court proceeding, the name and location of the court and the nature of the proceeding.)

b. Have you made any assignment of your property for the benefit of your creditors, or any general settlement with your creditors, within the 2 years immediately preceding the filing of the original petition herein? (If so, give dates, the name and address of the assignee, and a brief statement of the terms of assignment or settlement.)

11. Property in hands of third person.

Is any other person holding anything of value in which you have an interest? (Give name and address, location and description of the property, and circumstances of the holding.)

12. Suits, executions, and attachments.

a. Were you a party to any suit pending at the time of the filing of the original petition herein? (If so, give the name and location of the court and the title and nature of the proceeding.)

b. Were you a party to any suit terminated within the year immediately preceding the filing of the original petition herein? (If so, give the name and location of the court, the title and nature of the proceeding, and the result.)

c. Has any of your property been attached, garnished, or seized under any legal or equitable process within the 4 months immediately preceding the filing of the original petition herein? (If so, describe the property seized or person garnished, and at whose suit.)

13. Payments on loans and installment purchases.

What repayments on loans in whole or in part, and what payments on installment purchases of goods and services, have you made during the year immediately preceding the filing of the original petition herein? (Give the names and addresses of the persons receiving payment, the amounts of the loans and of the purchase price of the goods and services, the dates of the original transactions, the amounts and dates of payments, and, if any of the payees are your relatives, the relationship; if the bankrupt is a partnership and any of the payees is or was a partner or a relative of a partner, state the relationship; if the bankrupt is a corporation and any of the payees is or was an officer, director, or stockholder, or a relative of an officer, director, or stockholder, state the relationship.)

14. Transfers of property.

a. Have you made any gifts, other than ordinary and usual presents to family members and charitable donations, during the year immediately preceding the filing of the original petition herein? (If so, give names and addresses of donees and dates, description, and value of gifts.)

b. Have you made any other transfer, absolute or for the purpose of security, or any other disposition, which was not in the ordinary course of business during the year immediately preceding the filing of the original petition herein? (Give a description of the property, the date of the transfer or disposition, to whom transferred or how disposed of, and state whether the transferee is a relative, partner, shareholder, officer, or director, the consideration, if any, received for the property, and the disposition of such consideration.)

15. Accounts and other receivables.

Have you assigned, either absolutely or as security, any of your accounts or other receivables during the year immediately preceding the filing of the original petition herein? (If so, give names and addresses of assignees.)

16. Repossessions and returns.

Has any property been returned to, or repossessed by, the seller or by a secured party during the year immediately preceding the filing of the original petition herein? (If so, give particulars, including the name and address of the party getting the property and its description and value.)

17. Business leases.

If you are a tenant of business property, what are the name and address of your landlord, the amount of your rental, the date to which rent had been paid at the time of the filing of the original petition herein, and the amount of security held by the landlord?

18. Losses.

a. Have you suffered any losses from fire, theft, or gambling during the year immediately preceding the filing of the original petition herein? (If so, give particulars, including dates, names, and places, and the amounts of money or value and general description of property lost.)

b. Was the loss covered in whole or part by insurance? (If so, give particulars.)

19. Withdrawals.

a. If you are an individual proprietor of your business, what personal withdrawals of any kind have you made from the business during the year immediately preceding the filing of the original petition herein?

b. If the bankrupt is a partnership or corporation, what withdrawals, in any form (including compensation or loans), have been made by any member of the partnership, or by any officer, director, managing executive, or shareholder of the corporation, during the year immediately preceding the filing of the original petition herein? (Give the name and designation or relationship to the bankrupt of each person, the dates and amounts of withdrawals, and the nature or purpose thereof.)

20. Payments or transfers to attorneys.

a. Have you consulted an attorney during the year immediately preceding or since the filing of the original petition herein? (Give date, name, and address.)

b. Have you during the year immediately preceding or since the filing of the original petition herein paid any money or transferred any property to the attorney, or to any other person on his behalf? (If so, give particulars, including amount paid or value of property transferred and date of payment or transfer.)

c. Have you, either during the year immediately preceding or since the filing of the original petition herein, agreed to pay any money or transfer any property to an attorney at law, or to any other person on his behalf? (If so, give particulars, including amount and terms of obligation.)

(If the bankrupt is a partnership or corporation, the following additional questions should be answered.)

21. Members of partnership; officers, directors, managers, and principal stockholders of corporation.

a. What is the name and address of each member of the partnership, or the name, title, and address of each officer, director, and managing executive, and of each stockholder holding 25 percent or more of the issued and outstanding stock, of the corporation?

b. During the year immediately preceding the filing of the original petition herein, has any member withdrawn from the partnership, or any officer, director, or managing executive of the corporation terminated his relationship, or any stockholder holding 25 percent or more of the issued stock disposed of more than 50 percent of his holdings? (If so, give name and address and reason for withdrawal, termination, or disposition, if known.)

c. Has any person acquired or disposed of 25 percent or more of the stock of the corporation during the year immediately preceding the filing of the petition? (If so, give name and address and particulars.)

State of ____________ } *ss.*
County of __________ }

I, ______ ______, do hereby swear that I have read the answers contained in the foregoing statement of affairs and that they are true and complete to the best of my knowledge, information, and belief.

______ ______,
Bankrupt.

Subscribed and sworn to before me on ________.

______ ______,
______ ______
[*Official character*]

[*Person verifying for partnership or corporation should indicate position or relationship to bankrupt.*]

NOTES OF ADVISORY COMMITTEE ON RULES

This is a revision of Official Form No. 3. Most of the changes made in the form are identical or similar to those made in Official Form No. 2 and explained in the note accompanying the Statement of Affairs for a Bankrupt Not Engaged in Business.

The inquiry regarding tax returns here (#6a) extends back 3 years before the filing of the petition because of the possible relevance of the returns for all 3 years in determining the tax liability of a business bankrupt for the year in which the petition is filed.

The inclusion of the questions regarding suits, executions, and attachments (#12) cures a *casus omissus* in Official Form No. 3.

The question regarding loans repaid (#13) has been extended to cover payments on installment credit sales of goods and services. The purpose of this question is to develop information regarding possible preferences, and the Statement of Affairs is incomplete in this respect if it refers only to repayments of loans.

Information regarding business leases (#17) will be helpful in determining whether rental arrangements should be terminated or extended and whether the landlord may have a basis for asserting a lien or priority or may be liable for the return of a deposit to the estate.

The question regarding withdrawals (formerly #14, renumbered #19) has been elaborated to get information from individual proprietors comparable to that heretofore sought from partnerships and corporate bankrupts or debtors. This information will supplement that obtained pursuant to the questions regarding nonbusiness income (#5), payment of loans (#13), and other kinds of transfers in providing a picture of the disposition of assets during the year preceding the filing of the petition.

The question regarding the membership and management of a partnership or corporation (formerly #15, now #21) has been elaborated to develop information regarding significant changes during the year prior to the filing of the petition. Such information is likely to be of considerable assistance in discovering the reasons for the stringent financial condition of the bankrupt and in determining the disposition of its assets during the year preceding the filing of the petition.

The bankrupt is required to sign only the oath to the statement, but he must verify that he has read the statement as well as that it is true to the best of his knowledge, information, and belief. When the schedules and statement of affairs are filed simultaneously, as they ordinarily will be (see Rule 108(b)), the oaths may be combined, as provided in Rule 909. Only the original need be signed and verified, but the copies must be conformed to the original. See Rule 911(c).

FORM 9. CREDITORS' PETITION FOR BANKRUPTCY

[*Caption, other than designation, as in Form No. 1*]

CREDITORS' PETITION

1. Petitioners, ------ ------, of [1]------------, and ------ ------, of [1]------------, and ----------, of [1]------------, are creditors of ------------ ------------, of [1]------------, having provable claims against him, not contingent as to liability, amounting in the aggregate, in excess of the value of securities held by them, to $500 or over. The nature and amount of petitioners' claims are as follows: --
----
----

2. The alleged bankrupt has had his principal place of business [*or* has resided] within this district for the 6 months preceding the filing of this petition [*or* for a longer portion of the 6 months preceding the filing of this petition than in any other district].

3. The alleged bankrupt owes debts to the amount of $1,000 or over and is a person who may be adjudged an involuntary bankrupt under the Bankruptcy Act.

4. Within the 4 months preceding the filing of this petition, the alleged bankrupt committed an act of bankruptcy in that he did on -------------

Wherefore petitioners pray that ------ ------ be adjudged a bankrupt under the Act.

Signed: ------ ------,
Attorney for Petitioners.
Address: ------------,

[*Petitioners sign if not represented by attorney.*]

------ ------,
------ ------,
------ ------,
Petitioners.

State of------------
County of------------
ss.

I, ------ ------, one of the petitioners named in the foregoing petition, do hereby swear that the statements contained therein are true according to the best of my knowledge, information, and belief.

------ ------,
Petitioner.

Subscribed and sworn to before me on ----------.

------ ------,
------ ------
[*Official character*]

---

[1] State post-office address.

NOTES OF ADVISORY COMMITTEE ON RULES

This form, a revision of Official Form No. 5, is authorized for use by creditors as petitioners to have a debtor adjudged an involuntary bankrupt. The form assumes that there are 12 or more creditors and that at least 3 petitioners are therefore required by § 59b of the Act. The form may be adapted in cases appropriate for use by one or 2 qualified petitioners by adding a statement at the end of paragraph 1 that "All of the creditors of the bankrupt are less than 12 in number."

Changes have been made in the interest of clarifying and shortening the form and of minimizing the number of entries necessary to be made by the person preparing the petition for filing. Recitals respecting the nature of the petitioners' claims conform to the requirements of § 59b as amended in 1952 and 1962. Paragraph 2, which sets out the basis for venue of the case, includes the alternatives appropriate for most bankrupts. Other factual bases recognized by Rule 116(a) may be shown by minor adaptations of the form.

The negation heretofore contained in paragraph 2 of Official Form No. 5 that the debtor is a wage-earner or a farmer is insufficient to allege that he is a qualified petitioner since there are several other categories of persons ineligible to be adjudicated bankrupt who are not mentioned. A statement that the debtor is a person who may be adjudged an involuntary bankrupt is both simple and adequate.

The prayer for service of the petition with a subpoena is deleted as unnecessary.

FORM 10. SUMMONS TO BANKRUPT

[*Caption, other than designation, as in Form No. 1*]

SUMMONS

To the above-named bankrupt:

A petition in bankruptcy having been filed on ------------, in this court of bankruptcy, praying that you be adjudged a bankrupt under the Bankruptcy Act.

You are hereby summoned and required to file with this court and to serve upon the petitioners' attorney, whose address is ____________ ________, a motion or an answer[1] to the petition which is herewith served upon you, on or before ____________. If you fail to do so, you will be adjudged a bankrupt by default.

______ ______,
Clerk of District Court.

[Seal of the United States District Court]
Date of issuance: ____________.

[1] If you make a motion, as you may in accordance with Bankruptcy Rule 112, that rule governs the time within which your answer must be served.

NOTES OF ADVISORY COMMITTEE ON RULES

This form is a revision of Official Form No. 6. It is to be used as provided in Rule 111.

FORM 11. ADJUDICATION OF BANKRUPTCY.

[*Caption, other than designation, as in Form No. 1*]

ADJUDICATION

On consideration of the petition filed on ______ ______, it is adjudged that ______ ______ is a bankrupt.

Dated: ____________.

______ ______,
Bankruptcy Judge.

NOTES OF ADVISORY COMMITTEE ON RULES

This form is an adaptation of Official Form No. 11. It is appropriate for use when a debtor is adjudged a bankrupt on an involuntary petition filed under Rule 104 or 105(c) or on a petition for adjudication of a partnership under Rule 105(b) or 105(d).

If a contested petition is tried by the court without a jury (or with an advisory jury), the findings of fact and conclusions of law thereon must be stated separately. See Rule 752(a), which is made applicable to proceedings on a contested petition by Rule 121. The adjudication is required by Rule 115(d) to be set forth on a document conforming substantially to this form and to be entered in the referee's docket as provided by Rule 504(a) or, if made by the district judge, in the civil docket as provided by Rule 79(a) of the Federal Rules of Civil Procedure.

A certified copy of the order of adjudication may be recorded as provided in Rule 602(a) for the purpose of giving constructive notice of the pendency of the bankruptcy to subsequent purchasers and lienors of the bankrupt's realty pursuant to § 21g of the Act.

FORM 12. ORDER FOR FIRST MEETING OF CREDITORS AND RELATED ORDERS, COMBINED WITH NOTICE THEREOF AND OF AUTOMATIC STAY.

[*Caption, other than designation, as in Form No. 1*]

ORDER FOR FIRST MEETING OF CREDITORS AND FIXING TIMES FOR FILING OBJECTIONS TO DISCHARGE AND FOR FILING COMPLAINT TO DETERMINE DISCHARGEABILITY OF CERTAIN DEBTS, COMBINED WITH NOTICE THEREOF AND OF AUTOMATIC STAY

To the bankrupt, his creditors, and other parties in interest:

______ ______ of[1] ____________, having been adjudged a bankrupt on a petition filed by [*or* against] him on ____________, it is ordered, and notice is hereby given, that:

1. The first meeting of creditors shall be held at ________________, on _________, at ____ o'clock __.m.

2. The bankrupt shall appear in person [*or, if the bankrupt is a partnership,* by a general partner, *or, if the bankrupt is a corporation,* by its president *or other executive officer*] before the court at that time and place for the purpose of being examined.

3. ____________ is fixed as the last day for the filing of objections to the discharge of the bankrupt.

4. ____________ is fixed as the last day for the filing of a complaint to determine the dischargeability of any debt pursuant to § 17c(2) of the Bankruptcy Act.

You are further notified that:

The meeting may be continued or adjourned from time to time by order made in open court, without further written notice to creditors.

At the meeting the creditors may file their claims, elect a trustee, elect a committee of creditors, examine the bankrupt as permitted by the court, and transact such other business as may properly come before the meeting.

As a result of this bankruptcy, certain acts and proceedings against the bankrupt and his property are stayed as provided in Bankruptcy Rules 401 and 601.

If no objection to the discharge of the bankrupt is filed on or before the last day fixed therefor as stated in subparagraph 3 above, the bankrupt will be granted his discharge. If no complaint to determine the dischargeability of a debt under clause (2), (4), or (8) of § 17a of the Bankruptcy Act is filed within the time fixed therefor as stated in subparagraph 4 above, the debt may be discharged.

In order to have his claim allowed so that he may share in any distribution from the estate, a creditor must file a claim, whether or not he is included in the list of creditors filed by the bankrupt. Claims which are not filed within 6 months after the above date set for the first meeting of creditors will not be allowed, except as otherwise provided by law. A claim may be filed in the office of the undersigned bankruptcy judge on an official form prescribed for a proof of claim.

[*If a no-asset or nominal asset case, the following paragraph may be used in lieu of the preceding paragraph.*] It appears from the schedules of the bankrupt that there are no assets from which any dividend can be paid to creditors. It is unnecessary for any creditor to file his claim at this time in order to share in any distribution from the estate. If it subsequently appears that there are assets from which a dividend may be paid, creditors will be so notified and given an opportunity to file their claims.

Unless the court extends the time, any objection to the report of exempt property must be filed within 15 days after the report has been filed.

Dated: ____________.

______ ______,
Bankruptcy Judge.

---

[1] State post-office address.

NOTES OF ADVISORY COMMITTEE ON RULES

This form combines and revises Official Forms No. 42B and 43B. The alternative last paragraph is to be used when the court exercises the option under Rule 203(b) to notify the creditors that no dividends are to be anticipated and no claims need be filed.

The inclusion in the official form of information regarding the effect of the bankruptcy as a stay, the effect of the failure to file complaints objecting to discharge and to determine the dischargeability of debts, and the necessity of the filing of claims and objections to the report of exempt property is new. It should be helpful to the creditors and reduce the number of inquiries directed at referees' offices by recipients of the notice of the first meeting.

A certified copy of the order of adjudication may be recorded as provided in Rule 602(a) for the purpose of giving constructive notice of the pendency of the bankruptcy to subsequent purchasers and lienors of the bankrupt's realty pursuant to § 21g of the Act.

FORM 13. GENERAL POWER OF ATTORNEY.

[*Caption, other than designation, as in Form No. 1*]

GENERAL POWER OF ATTORNEY

To ------ ------ of[1] ------------, and ------------ of[1] ------------:

The undersigned claimant hereby authorizes you, or any one of you, as attorney in fact for the undersigned and with full power of substitution, to vote on any question that may be lawfully submitted to creditors of the bankrupt in the above-entitled case; [*if appropriate*] to vote for a trustee of the estate of the bankrupt and for a committee of creditors; to receive dividends; and in general to perform any act not constituting the practice of law for the undersigned in all matters arising in this case.

Dated: ------------.

Signed: ------ ------
[*If appropriate*] By ------ ------
as ------------
Address: ------------,

[*If executed by an individual*] Acknowledged before me on ------------.

[*If executed on behalf of a partnership*] Acknowledged before me on ------------, by ------ ------, who says that he is a member of the partnership named above and is authorized to execute this power of attorney in its behalf.

[*If executed on behalf of a corporation*] Acknowledged before me on ------------, by ------ ------, who says that he is ------------ of the corporation named above and is authorized to execute this power of attorney in its behalf.

------ ------,
------ ------
[*Official character*]

[1] State post-office address.

NOTES OF ADVISORY COMMITTEE ON RULES

Rule 910(c) requires a general power of attorney to be prepared substantially in conformity with this form, which is a revision of Official Form No. 18. Formal changes have been made to eliminate redundancy in the recitals, the implied requirement of a seal, and technical discrepancies in the form. While a power of attorney may of course be executed in favor of an attorney at law who is also retained as such to represent the creditor executing the form, the power of attorney does not purport to confer the right to act as an attorney at law. The corollary is that one not an attorney at law may act under a general power of attorney within the limitations prescribed in the form.

The statement respecting authority required in the acknowledgment accompanying a power of attorney executed on behalf of a partnership or corporation is in lieu of the requirement of General Order 21(5) heretofore existing that such an instrument be accompanied by an oath that the person executing is a member of the partnership or a duly authorized officer of the corporation.

FORM 14. SPECIAL POWER OF ATTORNEY.

[*Caption, other than designation, as in Form No. 1*]

SPECIAL POWER OF ATTORNEY

To ------ ---- of[1] ------------, and ---------- of[1] ------------:

The undersigned claimant hereby authorizes you, or any one of you, at attorney in fact for the undersigned [*if desired*: and with full power of substitution,] to attend the first meeting of creditors of the bankrupt or any adjournment thereof, and to vote in my behalf on any question that may be lawfully submitted to creditors at such meeting or adjourned meeting and for a trustee or trustees of the estate of the bankrupt.

Dated: ------------.

Signed: ------ ------
[*If appropriate*] By ------ ------
as ------------
Address: ------------

[*If executed by an individual*] Acknowledged before me on ------------.

[*If executed on behalf of a partnership*] Acknowledged before me on ------------, by ------ ------, who says that he is a member of the partnership named above and is authorized to execute this power of attorney in its behalf.

[*If executed on behalf of a corporation*] Acknowledged before me on ------------, by ------ ------, who says that he is ------------ of the corporation named above and is authorized to execute this power of attorney in its behalf.

------ ------,
------ ------
[*Official character*]

[1] State post-office address.

NOTES OF ADVISORY COMMITTEE ON RULES

A special power of attorney shall conform substantially with this official form, as provided in Rule 910(c), but it may grant either more or less authority in accordance with the language used. The form is a revision of Official Form No. 19.

FORM 15. PROOF OF CLAIM

[*Caption, other than designation, as in Form No. 1*]

PROOF OF CLAIM

1. [*If claimant is an individual claiming for himself*] The undersigned, who is the claimant herein, resides at[1] ------------.

[*If claimant is a partnership claiming through a member*] The undersigned, who resides at[1] ------------, is a member of ------------, a partnership, composed of the undersigned and ------------, of[1] ------------, and doing business at[1] ------------, and is authorized to make this proof of claim on behalf of the partnership.

[*If claimant is a corporation claiming through an authorized officer*] The undersigned, who resides at[1] ------------, is the ------------ of ------------, a corporation organized under the laws of ------------ and doing business at[1] ------------, and is authorized to make this proof of claim on behalf of the corporation.

[*If claim is made by agent*] The undersigned, who resides at [1]------------, is the agent of ------------, of [1]------------, and is authorized to make this proof of claim on behalf of the claimant.

2. The bankrupt was, at the time of the filing of the petition initiating this case, and still is indebted [*or* liable] to ths claimant, in the sum of $------.

3. The consideration for this debt [*or* ground of liability] is as follows:--.

4. [*If the claim is founded* on writing] The writing on which this claim is founded (or a duplicate thereof) is attached hereto [*or* cannot be attached for the reason set forth in the statement attached hereto].

5. [*If appropriate*] This claim is founded on an open account, which became [*or* will become] due on ------------, as shown by the itemized statement attached hereto. Unless it is attached hereto or its absence is explained in an attached statement, no note or other negotiable instrument has been received for the account or any part of it.

6. No judgment has been rendered on the claim except --

7. The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.

8. This claim is not subject to any setoff or counterclaim except--.

9. No security interest is held for this claim except ------------. [*If security interest in property of the debtor is claimed*] The undersigned claims the security interest under the writing referred to in paragraph 4 hereof [*or* under a separate writing which (or a duplicate of which) is attached hereto, *or* under a separate writing which cannot be attached hereto for the reason set forth in the statement attached hereto.]. Evidence of perfection of such security interest is also attached hereto.

10. This claim is a general unsecured claim, except to the extent that the security interest, if any, described in paragraph 9 is sufficient to satisfy the claim. [*If priority is claimed, state the amount and basis thereof.*] --.

Dated: ------------.

Signed: ------------

Penalty for Presenting Fraudulent Claim. Fine of not more than $5,000 or imprisonment for not more than 5 years or both—Title 18, U.S.C., § 152.

---

[1] State post-office address.

NOTES OF ADVISORY COMMITTEE ON RULES

This form combines the functions of Official Forms No. 28, 29, 30, and 31. It may be used by any claimant, including a wage earner for whom alternative short forms have been specially provided (Forms No. 16 and No. 16A), or by an agent or attorney for any claimant. Such a combined form is commonly used in practice.

If a security interest in the debtor's property is claimed, paragraph 9 requires that any security agreement (if not included in the writing on which claim is founded and which is required by paragraph 4 to be attached) be attached to the proof of claim or that the reason why it cannot be attached be set forth. Paragraph 9 further requires evidence of perfection of the security interest to be attached to the proof of claim. See the Note to Rule 302(c) as to what constitutes satisfactory evidence of perfection. The information so required will expedite determination of the validity of any claimed security interest as against the trustee. Paragraph 10, requires explicitness as to whether the claim is filed as a general, prior, or secured claim, will also facilitate administration and minimize troublesome litigation over the question whether a proof of claim was intended as a waiver of security. See, *e.g., United States National Bank v. Chase National Bank*, 331 U.S. 28, 35–36 (1947); Collier ¶ 57.07[3.1] (1961).

FORM 16. PROOF OF CLAIM FOR WAGES, SALARY, OR COMMISSIONS

[*Caption, other than designation, as in Form No. 1*]

PROOF OF CLAIM FOR WAGES, SALARY, OR COMMISSIONS

1. The bankrupt owes the claimant computed as follows: $------

(a) wages, salary, or commissions for services performed from ------------ to ------------, at the following rate or rates of compensation ---------------- $-----

[*if appropriate*] (a) allowances and benefits, such as vacation and severance pay [*specify*]

------------ $------

Total amount claimed $------

2. The claimant demands priority to the extent permitted by § 64a(2) of the Bankruptcy Act.

3. The claimant has received no payment, no security, and no check or other evidence of this debt except as follows: --

Dated: ------------

Signed: ------ ------,
Claimant.

Social Security Number: ------------
Address: ------------,

Penalty for Presenting Fraudulent Claim.—Fine of not more than $5,000 or imprisonment for not more than 5 years or both—Title 18, U.S.C., § 152.

NOTES OF ADVISORY COMMITTEE ON RULES

This form is new. It is an adaptation of Official Form No. 15 for the exclusive use of claimants for personal earnings in ordinary bankruptcy. Its limited purpose permits elimination of recitals that are appropriate for other classes of claimants. Most claimants using the form will be entitled to priority under § 64a(2) of the Act. If the claim as filed includes an amount not entitled to priority because, for example, not earned within the 3-month period immediately preceding the filing of the petition, reference to payroll records will ordinarily permit determination of the amount of the priority, if any, to which the claimant is entitled. If such records are unavailable, the claimant may be required to supply additional information as a condition to allowance of the claim with priority.

FORM 16A. PROOF OF MULTIPLE CLAIMS FOR WAGES, SALARY, OR COMMISSIONS

[*Caption, other than designation, as in Form No. 1*]

PROOF OF MULTIPLE CLAIMS FOR WAGES, SALARY, OR COMMISSIONS

1. The undersigned, whose address is [1] ----------, is the agent of the claimants listed in the statement appended to this proof of claim and is authorized to make this proof of claims on their behalf.

2. The bankrupt owes the claimants $------, computed as indicated in the appended statement.

3. The claimants demand priority to the extent permitted by § 64a(2) of the Bankruptcy Act.

4. The claimants have received no payment, no security, and no check or other evidence of this debt except as follows: ------------------------------ --

Dated: ------------

Signed: ------ ------

Penalty for Presenting Fraudulent Claim.—Fine of not more than $5,000 or imprisonment for not more than 5 years or both—Title 18, U.S.C., § 152.

[1] State post-office address.

STATEMENT OF WAGE CLAIMS

Names, Addresses, & Social Security Numbers	Dates services rendered, rates of pay, & fringe benefits	Amount Claimed

NOTES OF ADVISORY COMMITTEE ON RULES

This form is an alternative for Form No. 16 provided for use when there are numerous claimants for wages, salary, or commissions against a bankrupt estate and they wish to have their proofs of claim executed and filed by a common agent. Use of the form should not only simplify the filing procedure for the claimants but facilitate the handling of the claims by the court.

FORM 17. ORDER APPROVING ELECTION OF TRUSTEE OR APPOINTING TRUSTEE AND FIXING THE AMOUNT OF HIS BOND

[*Caption, other than designation, as in Form No. 1*]

ORDER APPROVING ELECTION OF TRUSTEE OR APPOINTING TRUSTEE AND FIXING THE AMOUNT OF HIS BOND

(1) ------ ------, of [1]------------, is hereby approved as the elected [*or* is hereby appointed] trustee of the estate of the above-named bankrupt.

(2) The amount of the bond of the trustee is fixed at $------.

Dated: ------------.

------ ------,

Bankruptcy Judge.

[1] State post-office address.

NOTES OF ADVISORY COMMITTEE ON RULES

This form is a revision of Official Form No. 20.

FORM 18. NOTICE TO TRUSTEE OF HIS ELECTION OR APPOINTMENT AND OF TIME FIXED FOR FILING A COMPLAINT OBJECTING TO DISCHARGE OF BANKRUPT.

[*Caption, other than designation, as in Form No. 1*]

NOTICE TO TRUSTEE OF ELECTION OR APPOINTMENT AND OF TIME FIXED FOR FILING A COMPLAINT OBJECTING TO DISCHARGE OF BANKRUPT

To ----- -----, of [1] ------------:

You are hereby notified of your election [*or* appointment] as trustee of the estate of the above-named bankrupt. The amount of your bond has been fixed at $------. You are required to notify the undersigned forthwith of your acceptance or rejection of the office.

You are further notified that ------------ has been fixed as the last day for the filing by you or any other party in interest of a complaint objecting to the discharge of the bankrupt.

Dated: ------------.

------ ------,

Bankruptcy Judge.

[1] State post-office address.

NOTES OF ADVISORY COMMITTEE ON RULES

This form is a revision of Official Form No. 22. It is to be used in giving the notice required by Rules 209(c) and 404(b). If a blanket bond has been authorized pursuant to Rule 212(b) or the requirement of a bond is excused pursuant to Rule 212(c), the second sentence of the form may be deleted.

FORM 19. BOND OF TRUSTEE OR RECEIVER.

[*Caption, other than designation, as in Form No. 1*]

BOND OF TRUSTEE [OR RECEIVER]

We, ------ ------, of [1] ------------, as principal, and ------ ------ of [1] ------------, as surety, bind ourselves to the United States in the sum of $------ for the faithful performance by the undersigned principal of his official duties as trustee [*or* receiver] of the estate of the above-named bankrupt.

Dated: ------------.

------ ------,

------ ------.

[1] State post-office address.

NOTES OF ADVISORY COMMITTEE ON RULES

This form is a simplification of Official Form No. 23. It may be used in an individual case under Rule 212(a), or, by modification of the caption, the reference in the bond to the bankrupt, and, where necessary, the reference to the principal, it may be adapted for use in a series of cases when a blanket bond is given. Unless otherwise provided by local rule, the completed bond is to be filed with the referee in accordance with Rule 212(f).

FORM 20. ORDER APPROVING TRUSTEE'S BOND.

[*Caption, other than designation, as in Form No. 1*]

ORDER APPROVING TRUSTEE'S BOND

The bond filed by ------ ------ of [1] ------------ as trustee of the estate of the above-named bankrupt is hereby approved.

Dated: ------------.

------ ------,

Bankruptcy Judge.

[1] State post-office address.

NOTES OF ADVISORY COMMITTEE ON RULES

This form is an adaptation of Official Form No. 24. When a certified copy of the order approving the bond is recorded in accordance with Rule 602, constructive notice of the pendency of the bankruptcy case is afforded thereby to subsequent purchasers and lienors of the bankrupt's real property as provided in § 21g of the Act. The form may be adapted for use when a blanket bond is given pursuant to an authorization of the court under subdivision (b). Rule 212 authorizes the court to approve other security than a bond or to excuse the filing of a bond in certain cases, but recordation of an order approving other security or excusing the bond would not come within the scope of § 21g.

FORM 21. ORDER THAT NO TRUSTEE BE APPOINTED.

[*Caption, other than designation, as in Form No. 1*]

ORDER THAT NO TRUSTEE BE APPOINTED

1. The bankrupt having been examined and the creditors not having elected a trustee; and

2. The court having determined that there is no property in the estate other than that which can be claimed as exempt, and that no other circumstances indicate the need for a trustee;

It is ordered that, until further order of the court, no trustee shall be appointed.

Dated: ____________.

______ ______,
Bankruptcy Judge.

NOTES OF ADVISORY COMMITTEE ON RULES

This form is an adaptation of Official Form No. 25 to include the recitals required by Rule 211.

FORM 22. REPORT OF EXEMPT PROPERTY

[*Caption, other than designation, as in Form No. 1*]

REPORT OF EXEMPT PROPERTY

The following property is set apart as provided under the Bankruptcy Act as exemptions allowed by law:

The following property claimed as exempt is not set apart for the reasons indicated:

Dated: ____________.

______ ______,
Trustee.

[*The report should describe the items of property set apart as exempt, should state the estimated value of each, the amount of money, if any, claimed and allowed, and should contain references to the statutes creating the exemptions.*]

NOTES OF ADVISORY COMMITTEE ON RULES

This form is a revision of Official Form No. 39. Rule 403 governs the making and disposition of the report of exempt property, including the procedure to be followed in the event no trustee qualifies. The bankruptcy judge files the report when there is no trustee, but a trustee or receiver must be appointed to represent the estate if the bankrupt files objections to the report.

FORM 23. ORDER APPROVING REPORT OF EXEMPTIONS.

[*Caption, other than designation, as in Form No. 1*]

ORDER APPROVING REPORT OF EXEMPTIONS

It is ordered that the report of property, set apart as exempt to the bankrupt, a copy of which is attached hereto [*or* which was filed on ___________], is approved and the claim of the bankrupt to his exemptions is allowed, except as follows:

Dated: ____________.

______ ______,
Bankruptcy Judge.

NOTES OF ADVISORY COMMITTEE ON RULES

This form is new. If the report was contested, the order approving the report of exemptions is required to be set forth on a separate document and to be entered in the appropriate docket, as provided in Rule 921(a). If there has been a trial on the facts, the facts and conclusions of law should be stated separately, as provided in Rule 752, which applies in contested matters by virtue of Rule 914. If no timely objections to the report of exempt property are filed, the report is deemed approved, as provided in Rule 403(e), but the bankrupt or other person entitled to claim the exemptions may obtain an order of approval at any time.

FORM 24. DISCHARGE OF BANKRUPT.

[*Caption, other than designation, as in Form No. 1*]

DISCHARGE OF BANKRUPT

It appearing that the person named above has filed a petition commencing a case under the Act on ____________, was duly adjudged a bankrupt and that no complaint objecting to the discharge of the bankrupt was filed within the time fixed by the court [*or* that a complaint objecting to discharge of the bankrupt was filed and, after due notice and hearing, was not sustained]; it is ordered that

1. The above-named bankrupt is released from all dischargeable debts.

2. Any judgment heretofore or hereafter obtained in any court other than this court is null and void as a determination of the personal liability of the bankrupt with respect to any of the following:

(a) debts dischargeable under § 17a and b of the Bankruptcy Act;

(b) unless heretofore or hereafter determined by order of this court to be nondischargeable, debts alleged to be excepted from discharge under clauses (2) and (4) of § 17a of the Act;

(c) unless heretofore or hereafter determined by order of this court to be nondischargeable, debts alleged to be excepted from discharge under clause (8) of § 17a of the Act, except those debts on which there was an action pending on the date when the petition was filed as specified above in which a right to jury trial existed and a party has either made a timely demand therefor or has submitted to this court a signed statement of intention to make such a demand;

(d) debts determined by this court to be discharged under § 17c(3) of the Act.

3. All creditors whose debts are discharged by this order and all creditors whose judgments are declared null and void by paragraph 2 above are enjoined from instituting or continuing any action or employing any process to collect such debts as personal liabilities of the above-named bankrupt.

Dated: ____________.

______ ______,
Bankruptcy Judge.

NOTES OF ADVISORY COMMITTEE ON RULES

This form is a revision of Official Form No. 45 to include the features required by § 14f of the Act. The form takes account of 1970 amendments which added §§ 14f, 17b, and

17c, and amended § 17a of the Act. The form goes beyond the requirements § 14f to include in the discharge order, as an aid to the debtor and any other court to which he may present his discharge, an indication in subparagraphs (b) and (c) of paragraph 2 that exception to discharge under clauses (2), (4), and in some instances (8) of § 17a of the Act can only be invoked in the bankrupt court pursuant to Rule 409a(2). As provided in Rule 404(h), a copy of the order of discharge must be mailed to creditors and the other persons specified in Rule 404(b) within 45 days after the order becomes final.

FORM 25. CAPTION FOR ADVERSARY PROCEEDING.

United States District Court
for the ______ District of ______

In re
______ ______, Bankruptcy No. ______
Bankrupt
______ ______,
Plaintiff
v.
______ ______,
Defendant

COMPLAINT [OR OTHER DESIGNATION]

Notes of Advisory Committee on Rules

Rule 710 requires the caption of a pleading in an adversary proceeding to conform substantially to this form. The form includes the elements required of a caption for each paper filed in a bankruptcy case as provided in Rule 904(b) and, in addition, the names and identification of the parties to the adversary proceeding. If there are 2 or more parties on either side of an adversary proceeding, the correct practice is prescribed by Federal Rule of Civil Procedure 10(a), made applicable to adversary proceedings by Rule 710. The caption of a motion filed in an adversary proceeding, or in connection with a contested matter that does not involve the petition or the adjudication, may properly be conformed to this form when there are adversary parties.

FORM 26. SUMMONS AND NOTICE OF TRIAL OF ADVERSARY PROCEEDING.

[*Caption, other than designation, as in Form No. 25*]

SUMMONS AND NOTICE OF TRIAL

To the above-named defendant:

You are hereby summoned and required to serve upon ____________, plaintiff's attorney, whose address is ____________, a motion or an answer [1] to the complaint which is herewith served upon you, on or before ____________, and to file the motion or answer with this court not later than the second business day thereafter. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

You are hereby notified that trial of the proceeding commenced by this complaint has been set for ______ ______, at ______ o'clock ___. m., in ____________.

______ ______,
Bankruptcy Judge.
By: ______ ______
Address: ____________,
____

Date of issuance: ____________.

---

[1] If you make a motion, as you may in accordance with Bankruptcy Rule 712, that rule governs the time within which your answer must be served.

Notes of Advisory Committee on Rules

This form is an adaptation of Form 1 accompanying the Federal Rules of Civil Procedure. It includes, however, a notice of the date of trial, which is required to be served with the summons by Rule 704. The summons may be issued by the bankruptcy judge or by an assistant to whom this function has been delegated by the bankruptcy judge. See Rule 506.

FORM 27. SUBPOENA TO WITNESS.

[*Caption, other than designation, as in Form No. 1 or No. 25*]

SUBPOENA TO WITNESS

To ______ ______:

You are hereby commanded to appear at ______ ______, on ____________, at ______ o'clock ___ m., to testify in the above-entitled case [*or* adversary proceeding *or* contested matter] [*add if appropriate*] and to bring with you __________________________
____
____

Dated: ____________.

______ ______,
Bankruptcy Judge.

Notes of Advisory Committee on Rules

This form is an adaptation of Official Form No. 27. As provided by Rule 916 the subpoena is to be issued by the bankruptcy judge and need not be under the seal of the court. If the subpoena is issued in connection with the hearing on a contested petition, the caption should conform to that in Form No. 1; if the subpoena is issued in connection with an adversary proceeding or other contested matter, the caption should conform to Form No. 25.

FORM 28. NOTICE OF APPEAL TO A DISTRICT COURT FROM A JUDGMENT OR ORDER OF A REFEREE ENTERED IN ADVISORY PROCEEDING.

United States District Court
for the ______ District of ______

In re
______ ______, Bankruptcy No. ______
Bankrupt
______ ______,
Plaintiff
v.
______ ______,
Defendant

NOTICE OF APPEAL TO DISTRICT COURT

______ ______, the plaintiff [*or* defendant *or other party*] appeals to the district court from the judgment [*or* order] of the referee entered in this case on ____________, [*here describe the judgment or order appealed from*] __________________________
____.

The parties to the judgment [*or* order] appealed from and the names and addresses of their respective attorneys are as follows:
____
____.

Dated: ____________.

Signed: ______ ______,
Attorney for Appellant.
Address ____________,
____

NOTES OF ADVISORY COMMITTEE ON RULES

This form is an adaptation of Form 1 in the Appendix of Forms accompanying the Federal Rules of Appellate Procedure. If the appeal is from an order entered in a proceeding on a contested petition or to vacate an adjudication or any proceeding in which there is no adversary party, the caption should conform to that in Form No. 1.

FORM 29. ORDER AND NOTICE FOR FINAL MEETING OF CREDITORS.

[*Caption, other than designation, as in Form No. 1*]

ORDER FOR FINAL MEETING OF CREDITORS AND NOTICE OF FILING OF FINAL ACCOUNT[S] OF TRUSTEE [AND RECEIVER] AND OF FINAL MEETING OF CREDITORS [AND OF HEARING ON ABANDONMENT OF PROPERTY BY THE TRUSTEE]

To the creditors:

The final report[s] and account[s] of the trustee [*if appropriate:* and of the receiver] in this case having been filed,

It is ordered, and notice is hereby given, that the final meeting of creditors will be held at -----------, ---------------, on -------------, at ------ o'clock -- m., for the purpose [*as appropriate*] of examining and passing on the report[s] and account[s], acting on applications for allowances, and transacting such other business as may properly come before the meeting. Attendance by creditors is welcomed by not required.

The following applications for allowances have been filed:

Applicants	*Commissions or fees*	*Expenses*
------ ------ *Receiver*	$------	$------
------ ------ *Trustee*	$------	$------
------ ------ *Attorney for bankrupt*	$------	$------
------ ------ *Attorney for receiver*	$------	$------
------ ------ *Attorney for trustee*	$------	$------
------ ------ *Attorney for petitioning creditors*	$------	$------
------------	$------	$------

Creditors may be heard before the allowances are determined.

The account of the trustee shows total receipts of $------, and total disubrsements of $-------. The balance on hand is $------.

In addition to expenses of administration as may be allowed by the court, liens and priority claims totaling $------, must be paid in advance of any dividend to general creditors.

Claims of general creditors totaling $------ have been allowed.

[*If appropriate*] The trustee's application to abandon the following property will be heard and acted upon at the meeting:

The bankrupt has [not] been discharged.

Dated: -------------

------ ------,
Bankruptcy Judge.

NOTES OF ADVISORY COMMITTEE ON RULES

This form is an adaptation of a form which has been made available to referees by the Administrative Office of the United States Courts and used for a number of years. Rule 204(c) requires a final meeting of creditors for all cases in which the net proceeds realized exceed $250. Rule 203(a) requires at least 10 days' notice by mail of any meeting of creditors. Rule 203(a) also requires the same kind of notice to creditors of all applications by receivers, marshals, trustees, committees, attorneys, and accountants for compensation and reimbursement of expenses. Rule 204 requires the notice of final meeting to be accompanied by a summary of the trustee's final account and statement of the amount of the claims. Substantial economies can be effected by combining all these required notices in one communication to the creditors as provided in the form.

In addition, the form suggests the appropriateness of including notice of any application by the trustee to abandon property pursuant to Rule 608. Considerable needless litigation has been generated by the lack of clarity in the record of closed bankruptcy cases whether particular property owned by the bankrupt but not administered had been abandoned. See 4A Collier ¶ 70.42[3] (1967).

The statement that the bankrupt has, or has not, been discharged is included as helpful information to the creditors, which should relieve referees' offices of the burden of answering inquiries as to such matters. If the creditors have previously received notice of the failure of the bankrupt to get a discharge pursuant to Rule 408, the last sentence may be omitted.

The specification of 2 optional recitals in this official form is not intended to negative the appropriateness of including other information with the notice of the final meeting.

FORM 30. REPORT OF TRUSTEE IN NO-ASSET CASE.

[*Caption, other than designation, as in Form No. 1*]

REPORT OF TRUSTEE IN NO-ASSET CASE

To ------ ------, Bankruptcy Judge:

------ ------, of [1]-----------, trustee of the estate of the above-named bankrupt, reports that he has neither received any property nor paid any money on account of this estate; that he has made diligent inquiry into the whereabouts of property belonging to the estate; and that there are no assets in the estate over and above the exemptions claimed by, and by him him set aside to, the bankrupt.

Wherefore he prays that this report be approved, and that he be discharged from office.

Dated: -----------

Signed: ------ ------,
Trustee.

[1] State post-office address.

NOTES OF ADVISORY COMMITTEE ON RULES

This form is a revision of Official Form No. 40.

APPENDIX I

Table of Cross References From Bankruptcy Rules and Forms to Bankruptcy Act, General Orders, Official Forms, Federal Rules of Civil Procedure, and Federal Rules of Appellate Procedure

Rule	Sources and related provisions
1	FRCP 1, 85, *Cf.* FRCP 81
102(a)	§ 22a; G.O. 12(1). *Cf.* §§ 2a(15), 38(1)–3, 43c; G.O. 22
102(b)	§§ 22b, 43c. *Cf.* FRCP 63
103	§ 59c. *Cf.* § 59a
104(a)	§ 59c. *Cf.* § 59b
104(b)	§ 59h
104(c)	*Cf.* § 3b; FRCP 9(b)
104(d)	G.O. 5(2)
104(e)	§ 59d & f
105(a)	§ 5b
105(b)	§§ 5b, 59c
105(c)	§ 5b
105(d)	§ 51
106	G.O. 5(3), *Cf.* G.O. 5(4)
107(a)	*Cf.* §§ 40c(1), 48c, 51(2), 52a
107(b)	§§ 40c(1), 48c, 51(2), 52; G.O. 35(4)
108(a)	§ 7a(8) & (9)
108(b)	§ 7a(8) & (9). *Cf.* G.O. 12(3)
108(d)	§ 39a(2); G.O. 9
108(e)	*Cf.* § 70a(7) & 2d & 3d ¶¶
109	§§ 7a(8), 18c
110	§ 39a(3); G.O. 11
111	§ 18a. *Cf.* FRCP 4
112	§ 18b; FRCP 12
113	§ 3c
114	§ 3d. *Cf.* FRCP 37(b)(2)
115(a)	§§ 18d, 38(1), *Cf.* § 4b
115(b)(1)	§§ 18d, 19a; FRCP 38(b) & (d)
115(b)(2)	FRCP 39(a) & (c)
115(b)(3)	FRCP 39(b)
115(b)(4)	FRCP 47–51
115(c)	§ 18e. *Cf.* § 4b
115(e)	§§ 2a(18), 69b; G.O. 34, *Cf.* § 50n
116(a)(1)	§ 2a(1)
116(a)(2)	§§ 2a(1), 128
116(a)(3)	§ 5d
116(a)(4)	*Cf.* § 129
116(b)	§§ 2a(19), 32b & c
116(c)	§§ 2a(19), 32a; G.O. 6
117(a)	G.O. 7; FRCP 42a
117(b)	*Cf.* § 5a & b
117(c)	FRCP 42(a)
118	§ 8
119	§ 2a(22)
120(a)	§59g. *Cf.* §§ 2a(8), 38(1)
120(b)(1)	G.O. 35(4). *Cf.* §§ 2a(8), 38(1)
120(b)(2)	G.O. 35(4)
120(b)(3)	*Cf.* § 59g (proviso)
121	§§ 2a(6), 21b, c, & k; G.O. 37
122(1)	§§ 238a(1), 261, 378a(1) & (2), 391, 483a(1) & (2), 516, 667(1) & (2) 676. *Cf.* §§ 381, 486, 669
122(3)	§§ 238a(4), 378a(4), 643
122(4)	§§ 238a(2), 338, 378a(2)
122(5)	*Cf.* §§ 238a(4), 378a(4), 483a(4), 643
122(6)	*Cf.* § 238a(2)
122(7)	§§ 238a(3), 378a(3), 483a(3). *Cf.* §§ 381, 486, 669
122(8)	§§ 238c, 378c, 483c
122(9)	§§ 238d, 378d, 483d
122(10)	§§ 238b, 378b, 483b
201(a)	§ 2a(3) & (5)
201(b)	*Cf.* § 2a(3)
201(c)	*Cf.* § 2a(3)
201(d)	§ 69a; O.F. 8
201(f)	§ 45
201(g)	G.O. 40
201(h)	§ 50b & h
201(i)	*Cf.* G.O. 17(4)
202	§ 2a(3) & (5); G.O. 40. *Cf.* § 69a; G.O. 19
203(a)	*Cf.* §§ 39a(1), 58c
203(a)(1)	§ 58a(3)
203(a)(2)	§ 58a(4)
203(a)(3)	§ 58a(6)
203(a)(5)	§ 58a(7). *Cf.* § 59g
203(a)(6)	§ 58a(5) & (8)
203(c)(1)	*Cf.* § 59g
203(c)(2)	Cf. §§ 238a(4), 378a(4), 643
203(c)(4)	§§ 14b(1), 58b
203(c)(5)	§ 14h
203(c)(7)	§ 14b(1)
203(e)	G.O. 21(2)
203(f)	§ 58a (proviso)
203(g)	§ 58e
203(h)	§ 58d
204(a)(1)	§ 55a. *Cf.* G.O. 12(3)
204(a)(2)	§§ 44a & b, 55b
204(b)	§ 55d; G.O. 25
204(c)	§§ 47a(14), 55e; G.O. 12(4). *Cf.* G.O. 15
205(a)	§§ 7a(10), 21a. *Cf.* § 47a(7)(a)
205(b)	§§ 7a(10), 21a, 55b. *Cf.* § 47a(7)(a)
205(c)	§ 55b
205(d)	§§ 7a(10), 21a
205(e)	FRCP 45(e). Cf. § 7a(10)
205(f)	§§ 7a(1) & (10) (2d proviso)
205(g)	§§ 7a(10) (1st proviso), 41a (proviso)
206(a)	§ 10a; 18 USC § 3146
206(b)	§§ 2a(14), 10b; FRCrP 40(a) & (b)
206(c)	18 USC § 3146(a) & (b). *Cf.* § 10a & b
207(a)	§ 57e
207(b)	§§ 44b, 56a & c
207(c)	§§ 56b, 57e
207(d)	§ 44a
208(a)(1)	G.O. 39. Cf. § 1(11)
208(c)(2)	G.O. 39
208(d)(4)	*Cf.* § 62c
208(d)(5)	*Cf.* § 62c
208(d)(6)	*Cf.* § 62c
209(a)	§§ 2a(17), 44a

Note.—If a number in the right-hand column of Appendix I is preceded by "§", it refers to a section of the Bankruptcy Act; if by "G.O.", to a General Order; if by "O.F.", to an Official Form in Bankruptcy; if by "FRCP", to a Federal Rule of Civil Procedure; if by "FRAP", to a Federal Rule of Appellate Procedure; if by "FRCrP", to a Federal Rule of Criminal Procedure; and if by "FRE", to a Federal Rule of Evidence.

Rule	Sources and related provisions
209(b)	§§ 2a(17), 44a
209(c)	§ 50b; G.O. 16. *Cf.* § 50j
209(d)	§ 45
210(a)	*Cf.* § 5c
210(b)	*Cf.* § 5c
210(e)	§ 5c
210(f)	§ 5e
211	G.O. 15
212(a)	§ 50b & k
212(d)	*Cf.* § 50k
212(e)	§ 50c, d, e, f, & g
212(f)	§ 50h & m
212(g)	§ 21e
213	G.O. 14; 11 USC § 76a
214	§ 44b
215(a)	G.O. 44, 45
215(b)	G.O. 44
215(c)	§ 44c
215(d)	*Cf.* G.O. 44 (2d¶)
216	§ 2a(5)
217(a)	FRCP 17(b). *Cf.* §§ 48a(4), 69c; G.O. 51
217(b)	*Cf.* §§ 2a(20), 38(6)
218(1)	G.O. 17(1)
218(2)	§ 47a(3) & (5)
218(3)	§ 47a(10). Cf. § 49
218(4)	§ 47a(12). *Cf.* G.O. 17(4)
218(5)	§ 47a(13). *Cf.* G.O. 17(4)
219(a)	§ 62a(1) & d. *Cf.* §§ 48a–c, 52b, 64a(1); G.O. 45
219(b)	§ 62d. *Cf.* §§ 60d, 64a(1)
219(c)(1)	§ 62a(1), 64a(1); G.O. 35(3); 11 USC § 76a. *Cf.* G.O. 43, 45
219(c)(2)	§ 72. *Cf.* §§ 48a–d, 52b, 64a(1)
219(c)(3)	G.O. 42. *Cf.* G.O. 45
219(d)	§§ 48e, 62c & d
220	§ 60d
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221(b)	§ 46; FRCP 25(d). *Cf.* §§ 1(22), 2a(6)
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301(b)	§ 57a
302(a)	§ 57n
302(b)	§ 57c; G.O. 20
302(c)	§ 57b; G.O. 21(1)
302(d)	G.O. 21(3)
302(e)	§ 57n
303	*Cf.* § 2a(2A)
304	§ 57l; G.O. 21(4)
305	*Cf.* FRCP 41(a)
306(a)	§ 47a(8)
306(b)	§ 57d. *Cf.* § 2a(2)
306(c)	§ 57f. *Cf.* §§ 2a(2) & (2A), 57g
306(d)	§ 57h
307	§ 57f. G.O. 21(6). *Cf.* § 2a(2)
308	§§ 39a(5), 47a(11), 65a & b. *Cf.* & 2a (7)
310	§ 66
401	*Cf.* §§ 11a, 14f(2), 17c(4)
402(1)	§ 7a(1) & (10). *Cf.* § 47a(7)
402(2)	§ 7a(1) & (10). *Cf.* § 47a(7)
402(4)	*Cf.* §§ 324(1), 424(1), 624(1)
402(5)	§ 7a(3), (5), (6), (7), & (11)
402(6)	§ 7a(2) & (4)
403(a)	§ 7a(8). *Cf.* § 6
403(b)	§ 47a(6); G.O. 17(2)
403(c)	§ 2a(11); G.O. 17(2)
403(d)	*Cf.* G.O. 15
403(e)	§ 2a(11)
403(f)	§ 8 (proviso)
404(a)	§ 14b(1); G.O. 32
404(b)	§§ 14b(1), 58b
404(c)	§ 14b(1)
404(d)	§§ 2a(12), 14b(2), 38(4); G.O. 35(4) (c)
404(e)	§ 14b(2); G.O. 32
404(f)	§ 14f
404(g)	§ 14g
404(h)	§ 14h
405	§ 14a. *Cf.* G.O. 31
406	§ 14e. *Cf.* § 7a(1) & (10)
407	§ 14c (proviso)
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409(a)(2)	§§ 14b(1), 17c(2), 58b
409(b)	§ 17c(3)
409(c)	*Cf.* § 17c(5)
409(d)	§§ 2a(12), 38(4)
501(a)	FRCP 77(a). *Cf.* § 2a
501(b)	FRCP 77(b)
501(c)	FRCP 77(c). *Cf.* § 1(18)
502	P.L. 92–310
503	§ 39b
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504(b)	§§ 39a(9), 42c; G.O. 1, 24
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505(b)(1)	§ 39b; 28 USC § 455
505(b)(2)	ABA Canons of Jud. Ethics 13
505(c)	28 USC § 455
506	*Cf.* 28 USC § 956
507(a)	G.O. 1; FRCP 79(a)
507(b)	§ 51(4)
507(c)	§ 71. *Cf.* FRCP 79(c)
507(d)	§ 71; G.O. 1
507(e)	FRCP 79(d)
508	§ 49; G.O. 1, 24. *Cf.* §§ 39a(4), 47a(10)
509(a)	§ 57c; G.O. 20
509(b)	G.O. 2
509(c)	G.O. 21(1)
510	*Cf.* § 21d, e, & f
511(a)	§§ 38(7), 39a(7); 28 USC § 753(b). *Cf.* § 62a(3); G.O. 10
511(b)	28 USC § 753(b) & (f). *Cf.* G.O. 10
511(c)	§ 21d; 28 USC § 753(b); FRCP 80(c)
512(a)	§ 61
512(b)	§ 61; G.O. 53(1) & (2)
512(c)	G.O. 53(5)
512(d)	§ 50h; G.O. 53(2)
512(e)	G.O. 53(6). *Cf.* G.O. 53(7) & (9)
512(f)	G.O. 53(10)
512(g)	G.O. 53(8)
512(h)	G.O. 53(3) & (4)
513	FRCP 52(a), 53
514	§ 2a(8). *Cf.* § 47a(1)
515	§ 2a(8)
601	*Cf.* §§ 2a(15), 148
602(a)	§ 47c. *Cf.* § 21g
602(b)	*Cf.* § 70d(3)
603	§ 70d(5)
604(a)	§§ 2a(21), 69d

Rule	Sources and related provisions
604(b)	§ 2a(21). *Cf.* § 69d
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605(b)	§ 47a(2)
605(c)	§ 47a(4); G.O. 29
606(a)	§ 70f
606(b)(1)	§ 70f
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606(b)(3)	*Cf.* § 2a(7)
606(b)(4)	§ 70g
606(c)	§ 70f; G.O. 45
607	§ 70b
609	G.O. 28
610	§§ 2a(3), 11b & c. *Cf.* § 11e
611	§§ 60b, 67a(3), 67c(2), 67d(6), 70e(2)
612	§ 67a(4). *Cf.* § 67a(2)
701	*Cf.* § 2a(7); FRCP 1
701(1)	*Cf.* §§ 2a(21), 17c(3), 50n, 57g & 1, 60b & d, 67a, c, & d, 69b, 70a, c, d, & e
701(2)	*Cf.* §§ 2a(2A), 57g, 60b & d, 67a, c, & d, 70c & e
701(3)	*Cf.* § 2a(7)
701(4)	*Cf.* §§ 2a(12), 14b(2), 15, 38(4); G.O. 32
701(5)	*Cf.* §§ 2a(15), 11a, 17c(4)
701(7)	*Cf.* §§ 2a(12), 17c(1) & (3), 38(4)
703	FRCP 3
704(a)	FRCP 4(a), (b), & (d)
704(b)	FRCP 4(d), *Cf.* FRCP 4(i)(1), 45(c)
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704(d)	FRCP 4(e)
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704(f)(3)	FRCP 4(f)
704(g)	FRCP 4(g)
704(h)	FRCP 4(h)
705(a)	§ 21c; G.O. 4; FRCP 5(a)-(c)
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707	FRCP 7(a)
708	FRCP 8
709	FRCP 9
710	FRCP 10
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713	§ 2a(6); FRCP 13
714	FRCP 14
715	FRCP 15
716	FRCP 16
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718	FRCP 18
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723	FRCP 23
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723.2	FRCP 23.2
724	FRCP 24
725	§ 2a(6); FRCP 25. *Cf.* § 1(22)
726	§ 21b & k; FRCP 26
727	§§ 21b & c, 39a(7); FRCP 27
728	§ 21b; FRCP 28
729	§ 21b & k; FRCP 29
730	§ 21b, c, & k; FRCP 30
731	§ 21b, c, & k; FRCP 31
732	§ 21b & c; FRCP 32
733	§ 21k; FRCP 33
734	§§ 21k, 38(2); FRCP 34

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736	§ 21k; FRCP 36
737	§ 21b & k; FRCP 37. *Cf.* § 3d
741	FRCP 41
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744.1	FRCP 44.1
752	FRCP 52. *Cf.* G.O. 47
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754(b)	§ 2a(18). *Cf.* FRCP 54(d)
755	FRCP 55
756	FRCP 56
762	FRCP 62
764	FRCP 64
765	FRCP 65. *Cf.* §§ 2a(15), 11a, 14f(2). 17c(4)
767	FRCP 67
768	FRCP 68
769	FRCP 69
770	FRCP 70
771	FRCP 71
782	*Cf.* §§ 2a(20), 38(6)
801	§ 39c; FRAP 3(a) & (c)
802	§ 39c; FRAP 4(a)
803	§ 39c
804	FRAP 3(d)
805	§§ 25b, 39c; FRAP 8(a) & (b)
806	§§ 39a(8); FRAP 10(b), 11(a) (last sentence). *Cf.* § 42b
807	§ 39a(6) & (8); FRAP 11(a), 12(a)
808	FRAP 31(a)
809	FRAP 34(b)
810	§ 2a(10); G.O. 47; FRCP 52(a)
811	FRAP 39(a) & (e)
812	FRAP 40(a)
813	§ 39a(6); FRAP 45(c) & (d)
814	FRAP 2
901(3)	§ 106(13); 15 USC § 79b(a)(8)(A) & (11)
901(6)	§§ 7b, 10c
901(7)	*Cf.* §§ 1(20), 43c
901(8)	FRCP 54(a). *Cf.* § 39c.
901(9)	FRCP 7(b)
901(10)	§ 1(24); FRCP 7(a). *Cf.* § 1(24)
902(1)	*Cf.* FRCP 2
902(3)	*Cf.* § 1(6)
902(4)	*Cf.* § 1(20)
902(5)	FRCP 54(a). *Cf.* § 39c
903	FRCP 1
904(a)	G.O. 5(1)
904(b)	G.O. 5(3)
905	FRCP 61. Cf. § 39a(9)
906(a)	§§ 1(18), 31; FRCP 6(a)
906(b)	FRCP 6(b)
906(c)	§ 21k (proviso); G.O. 37 (last sentence)
906(d)	FRCP 6(d)
906(e)	FRCP 5(b) (last sentence)
907	*Cf.* §§ 39a(1), 58c, 120, 315, 415, 615
908	§ 28
909	G.O. 38
910(a)	G.O. 4. *Cf.* § 1(11)
910(b)	G.O. 4
910(c)	G.O. 21(5); O.F. 18, 19
911(a)	FRCP 7(b)(2), 11

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911(b)	FRCP 11. *Cf.* §§ 7a(8), 57b, 62a(1) & d, 69d
912(a)	§ 20a. *Cf.* § 38(2); 28 USC §§ 459, 953
912(b)	§§ 1(21), 20b; 1 USC § 1; FRCP 43(d). *Cf.* FRE 603
913	§ 9(2); G.O. 30. *Cf.* G.O. 12(1)
914	§§ 2a(6) & (7), 21b & k, 39a(7); G.O. 37
915(a)	§ 2a(7)
915(b)	*Cf.* § 23b
916	FRCP 45, *Cf.* G.O. 3
917	FRE 1101(b). Cf. § 21d, e, f, & j; G.O. 22
918	*Cf.* FRCP 26(c)
919(a)	§ 27; G.O. 28, 33
919(b)	§ 26; G.O. 33
920	§ 41(b); FRCrP 42 *Cf.* §§ 2a(13) & (16), 38(2)
921	FRCP 58. Cf. § 2a(15); G.O. 23
922	FRCP 77(d)
923	FRCP 59
924	§ 57k; FRCP 60. *Cf.* §§ 2a(2), (8), & (12), 15
925	§§ 50n, 69b; FRCP 65.1
926	FRCP 46
927	G.O. 56; FRCP 83; FRCrP 57(a)
928	FRCP 82

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2	*Cf.* G.O. 35(4)
3	*Cf.* G.O. 35(4)(a)
6	O.F. 1 (Schedules)
7	O.F. 2
8	O.F. 3
9	§ 59b; O.F. 5
10	O.F. 6
11	O.F. 11
12	§ 7a(1); O.F. 42B, 43B. *Cf.* O.F. 17, 17A, 17B, 42, 42A, 43, 43A
13	G.O. 21(5); O.F. 18
14	G.O. 21(5); O.F. 19
15	O.F. 28–31. *Cf.* G.O. 21(1)
16	O.F. 28
17	O.F. 20
18	O.F. 22
19	O.F. 23
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21	O.F. 25
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24	§ 14f; O.F. 45
26	FRCP Form 1
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29	*Cf.* §§ 47a(14), 55e; G.O. 12(4)
30	O.F. 40

APPENDIX II

Table of Cross References From Bankruptcy Act, General Orders, Official Forms, Federal Rules of Civil Procedure, and Federal Rules of Appellate Procedure to Bankruptcy Rules and Official Bankruptcy Forms

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§ 2a(2)	*Cf.* 306(b) & (c), 307, 924
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§ 2a(11)	403(c) & (e)
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§ 2a(21)	604. *Cf.* 701(1)
§ 2a(22)	119
§ 3b	*Cf.* 104(c)
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§ 3d	114. *Cf.* 737
§ 4b	*Cf.* 115(a) & (c)
§ 5a	*Cf.* 105, 117(b)
§ 5b	105(a), (b), & (c). *Cf.* 117(b)
§ 5c	210(e). *Cf.* 117(c), 210(a) & (b)
§ 5d	116(a)(3)
§ 5e	210(f)
§ 5i	105(d)
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§ 7a(3)	402(5)
§ 7a(4)	402(6)
§ 7a(5)	402(5)
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Rule 10–1. Scope of Chapter X Rules and Forms; Short Title.

The rules and forms in this Title IV govern the procedure in courts of bankruptcy in cases under Chapter X of the Bankruptcy Act. These rules may be known and cited as the Chapter X Rules. These forms may be known and cited as the Official Chapter X Forms.

NOTES OF ADVISORY COMMITTEE ON RULES

A "Chapter X case" as defined in Rule 10–101, is one wherein a petition has been filed by a person seeking relief under Chapter X of the Bankruptcy Act. The case includes all of the proceedings and matters which arise in connection with the case and of which the court of bankruptcy is given jurisdiction under Chapter X and incorporated provisions of Chapters I–VII of the Act. See § 102. The rules and forms in this Title IV do not apply to a case initiated under Chapters I–VII of the Act unless a Chapter X petition is filed in a pending bankruptcy case pursuant to Rule 10–104 or 10–105, nor to a case initiated under any of the other debtor-relief chapters (VIII, IX, XI–XIII). Nor do these rules prescribe except incidentally the practice for actions or "plenary proceedings" brought in state courts or federal district courts to determine controversies that arise in connection with a Chapter X case.

"Courts of bankruptcy" are defined in § 1(10) of the Bankruptcy Act, 11 U.S.C. § 1(10), to "include the United States district courts and the district courts of the Territories and possessions to which this Act is or may hereafter be applicable." (References to the Bankruptcy Act hereinafter will be to the Act and will omit citations to Title 11 the United States Code.) The courts of bankruptcy clearly include the district courts of Guam and the Virgin Islands. 1 Collier, Bankruptcy ¶ 1.10 at 71–72 n. 22 (14th ed. rev. 1968), citing relevant statutory provisions. (Hereinafter citations to the Collier treatise will omit the title and references to the edition but will include the date of the revision of the cited material.) It is problematical whether the District Court for the District of the Canal Zone is a bankruptcy court, but it appears that this court has not undertaken to act as a court of bankruptcy. 1 Collier *supra* at 72.

Rule 10–2. Meanings of Words in the Bankruptcy Rules When Applicable in a Chapter X Case.

The following words and phrases used in the bankruptcy rules made applicable in Chapter X cases by these rules have the meanings herein indicated, unless they are inconsistent with the context:

(1) "Bankrupt" means "debtor."

(2) "Bankruptcy" or "bankruptcy case" means "Chapter X case."

(3) "Receiver," "trustee," "receiver in bankruptcy," or "trustee in bankruptcy" means the "receiver," "trustee," or "debtor continued in possession" in the Chapter X case.

NOTES OF ADVISORY COMMITTEE ON RULES

These rules make many of the Bankruptcy Rules applicable in Chapter X cases or in proceedings therein, and this rule indicates the substitution or translation of certain terms that is necessary for this purpose.

PART I.—PETITION AND PROCEEDINGS RELATING THERETO

Rule 10–101. Commencement of Chapter X Case.

A Chapter X case is commenced by the filing with the court of a petition by or against a corporation, seeking relief under Chapter X of the Act.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule prescribes the mode for beginning a case under Chapter X whether by filing an original petition pursuant to Rule 10–104 or 10–105 or a petition in a pending bankruptcy case under those rules, which are derived from §§ 128 and 127 of the Act, or as a result of an order stemming from an application meeting the requirements of a petition under Rule 11–15 of the Chapter XI rules. The rules assume the continuing applicability of the definition of "petition" in § 1(24) of the Act, but, as used in the rules in this title, the word refers to the document commencing a Chapter X case. The place of filing a petition is more fully particularized in Bankruptcy Rule 509.

Rule 10–102. Chapter X Cases Originally Commenced Under Another Chapter of the Act.

When a case commenced under another chapter of the Act proceeds under Chapter X, the Chapter X case shall be deemed to have been originally commenced as of the date of the filing of the first petition initiating a case under the Act.

NOTES OF ADVISORY COMMITTEE ON RULES

The purpose of this rule is to protect those rights that develop upon the filing of a petition commencing a case for relief under the Bankruptcy Act. The first case may have been a bankruptcy case which was transferred to Chapter X by petition or a chapter XI case which was ordered to proceed under Chapter X. This rule is not intended to invalidate any action taken in the superseded case before it was converted to a Chapter X case.

Rule 10–103. Reference of Cases; Withdrawal of Reference and Assignment.

(a) Reference.

(1) On the filing of a petition, if a local rule so provides, the clerk shall refer the case forthwith to a referee or to more than one referee concurrently as bankruptcy judge or judges. Thereafter all proceedings in the case shall be before the referee except as otherwise provided by subdivision (b) of this rule, by Bankruptcy Rule 920, by § 2a(15) of the Act when a complaint seeks an injunction to restrain a court, by § 43c of the Act when the office of the referee is vacant, and by the provisions in the Act and Part VIII of the Bankruptcy Rules governing appeals from judgments of the referee.

(2) If a local rule does not provide for automatic reference of a Chapter X case by the clerk, the case shall be assigned to a district judge, who may act himself or may, at any time during its pendency,

refer the case to a referee or to more than one referee concurrently as bankruptcy judge or judges generally or for any specified purpose.

(b) Withdrawal of Reference and Assignment.

The district judge may, at any time, for the convenience of parties or other cause, withdraw a case in whole or in part from a referee and either act himself or assign the case or part thereof to another referee in the district.

Notes of Advisory Committee on Rules

This rule represents a departure from current procedure prescribed by the Act which, in § 117, provides that the judge may refer a proceeding to a referee for all matters not reserved.

Subdivision (a)(1) permits local rule to provide for an automatic reference of a Chapter X case to a referee. Paragraph (2) of subdivision (a) permits the district judge in a given case to refer it to a referee when there is no local rule providing for an automatic reference. Thus, as distinguished from the Bankruptcy Rules and Chapter XI, XII and XIII Rules, this rule makes a reference depend on a provision therefor by local rule or at the direction of a district judge in the particular case. If neither of these options is availed of the case will proceed under the supervision of the district judge. See Rule 10-901 for inclusion of district judge within the term "bankruptcy judge."

When there is a reference under subdivision (a), the limitations on the referee are the same as in Bankruptcy Rule 102 except for the reference therein to Rule 115(b). Bankruptcy Rule 115(b) is inapplicable in a Chapter X case because, although an act of bankruptcy may be alleged in the involuntary petition by virtue of §§ 143 and 144 of the Act, the issues raised by the answer are to be determined "without the intervention of a jury." Section 19 of the Act is thus inconsistent with the provisions of Chapter X and therefore inapplicable in a corporate reorganization case. See, 6 Collier, ¶ 6.04, n. 4 (1965).

The first sentence of subdivision (a) of this rule is derived from § 22a of the Act. The practice, in bankruptcy cases, which has become established in some districts under § 22a of the Act, of referring cases concurrently to 2 or more referees of the court is recognized as proper by this rule.

The second sentence of subdivision (a) is adapted from General Order 12(1). After the reference the district judge may act in a corporate reorganization case only when he withdraws a case from the referee pursuant to subdivision (b); when the office of referee becomes vacant as provided in § 43c of the Act; when the district judge hears and determines issues under Bankruptcy Rule 920 on a certification that contempt has been committed; when a complaint seeks injunctive relief against another court, which may be granted under § 2a(15) of the Act only by a judge; or when a judgment of the referee is bing reviewed on appeal pursuant to § 2a(10) and 39c of the Act. The rules in Part VIII govern the procedure on review by the district judge of judgments of the referee in Chapter X cases. Sections 24a and b of the Act and the Federal Rules of Appellate Procedure govern the procedure on appeals to the court of appeals. Section 24c of the Act and the Rules of the Supreme Court of the United States apply to review by that Court. These rules do not govern plenary actions in the district courts of the United States or the state courts.

Subdivision (b) consolidates the provisions for transfer of a case from one referee to another in § 22b of the Act and for withdrawal of a reference in § 43c of the Act. The withdrawal and reassignment may be on motion or on the court's own initiative. Cause for withdrawal of a reference includes the statutory grounds specified in § 43c, *viz.*, temporary absence or disqualification of the referee and the need for expediting the business of the court. As noted above § 43c continues to govern the situation in which a referee's office is vacant. Subdivision (b) makes explicit what is implied by the statutory provisions, *viz.*, that the judge may assign or withdraw a part as well as the whole of a case from a referee. See *In re Press Printers & Publishers, Inc.*, 12 F.2d 660, 664-65 (3d Cir. 1926), *cert. denied*, 48 S.Ct. 339, 276 U.S. 633, 72 L.Ed. 742 (1928). If the reason for assignment or withdrawal ceases to be operative, the case or proceeding may be remanded to the same referee. In district courts having more than one judge the authority conferred by this rule should be exercised according to the rules and orders of the court as provided by 28 U.S.C. § 137.

Subdivision (b) governs only the assignment of a proceeding to a referee within the territorial jurisdiction of the court. *Cf. In re Schenectady Engineering & Construction Co.*, 147 Fed. 868 (N.D.N.Y.1906). The transfer of a case to another district is dealt with by Rule 10-114 and the transfer of an adversary proceeding to another district is governed by Bankruptcy Rule 782. Section 43c of the Act governs the assignment of a referee from without the district.

Rule 10-104. Voluntary Petition and Stay.

(a) Form and Number.

A voluntary petition shall conform substantially to Official Form No. 10-1. If a bankruptcy case is pending by or against the debtor, any petition under this rule shall be filed therein and may be filed before or after adjudication. An original and 6 copies of the petition shall be filed, unless additional copies are required by local rule. The clerk of the district court or, when the petition is filed in a pending case, the bankruptcy judge shall transmit one copy to the district director of internal revenue for the district in which the case is filed, one copy to the Secretary of the Treasury, and two copies to the Securities and Exchange Commission.

(b) Stay.

The filing of a petition in a pending bankruptcy case shall act as a stay of adjudication and of administration of an estate in bankruptcy.

Notes of Advisory Committee on Rules

This rule requires that the petition be filed in 1 original and 6 copies. It also incorporates the requirements of §§ 265a and 266 and General Order 52(3)-(5) with respect to transmittal of copies of the petition to the Securities and Exchange Commission, Secretary of the Treasury, and District Director of Internal Revenue. Additionally, note should be taken of local rules to determine whether or not any additional copies must be filed.

Pursuant to the rule dealing with venue, Rule 10-114, a Chapter X petition filed in a pending bankruptcy case must be filed in the court in which the bankruptcy case is pending. Normally, the petition is filed with the clerk as provided in Bankruptcy Rule 509 but if it is filed in a pending bankruptcy case and local rule provides for automatic reference of a Chapter X case (see Rule 10-103(a)), it will be filed with the referee because there will already have been a reference and this would be a paper subsequent to such reference. See also Rule 10-501. In such a case, the court should see to it that proper distribution of the copies of the petition is made but this administrative duty can be delegated to the clerk.

As provided in Rule 10-601, the filing of the petition acts as a stay of other proceedings against the debtor. Subdivision (b) of this rule provides that all proceedings in the bankruptcy case are stayed if the Chapter X petition is filed in a pending bankruptcy case. It is adapted from § 148 of the Act.

Only the original of the petition need be signed and verified, but the copies must be conformed to the original. See Bankruptcy Rule 911(c).

Rule 10-105. Involuntary Petition and Stay.

(a) Form and Number.

An involuntary petition shall conform substantially to Official Form No. 10-2. If a bankruptcy case is pending by or against the debtor, any petition under this rule shall be filed therein and may be filed before or after adjudication. The number and distribution of copies shall be as specified in Rule 10-104.

(b) Transferor or Transferee of Claim.

Bankruptcy Rule 104(d) applies in Chapter X cases.

(c) Joinder of Petitioners After Filing.

Creditors other than the original petitioners may join in an involuntary petition at any time before its dismissal.

(d) Stay.

The filing of a petition in a pending bankruptcy case shall act as a stay of adjudication and of administration of an estate in bankruptcy.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (a) is similar to Rule 10-104(a) and reference thereto should be made to determine the number of copies of the petition that must be filed, and the distribution to be made of such copies.

A Chapter X petition filed in a pending bankruptcy case shall be filed in the court in which the bankruptcy case is pending. See Rule 10-114. In such event, the petition is filed with the referee if local rule provides for automatic reference of a Chapter X case. See Rules 10-103(a) and 10-501. The court or, by direction, the clerk should make the necessary distribution of copies.

Subdivision (b) is complementary to § 146(1) of the Act and is a revision of General Order 5(2). A signed statement of the petitioning creditor is made acceptable in lieu of the affidavit required by the general order, in line with the policy declared in Bankruptcy Rule 911(b) (applicable to Chapter X cases) and discussed in the Note accompanying that rule. The subdivision requires disclosure of any transfer by the petitioner as well as a transfer to him and applies to transfers for security as well as unconditional transfers. *Cf. In re 69th & Crandon Bldg. Corp.*, 97 F.2d 392, 395 (7th Cir.), cert. denied 59 S.Ct. 93, 305 U.S. 629, 83 L.Ed. 403 (1938), recognizing the right of a creditor to sign a bankruptcy petition notwithstanding a prior assignment of his claim for the purpose of security. This rule does not, however, quality the requirement of § 126 of the Act that a petitioning creditor must have a liquidated claim not contingent as to liability.

Subdivision (c) permits other creditors to join in an involuntary petition. Rule 10-210 which is derived from § 207 of the Act places it within the discretionary power of the court to permit intervention by a party in interest "generally or with respect to any specified matter." This subdivision removes the element of discretion for the purpose of intervention as petitioning creditor.

Subdivision (d) of this rule provides that all proceedings in the bankruptcy case be stayed if the Chapter X petition is filed in a pending bankruptcy case. It is adapted from § 148 of the Act. See also Rule 10-601 which provides for an automatic stay of proceedings against the debtor and its property upon the filing of a Chapter X petition.

This rule does not contain a counterpart to subdivision (b) of Bankruptcy Rule 104. Thus, with regard to involuntary Chapter X petitions, the Chapter X Rules do not disqualify any creditor from acting as a petitioning creditor because of the doctrine of estoppel emanating from participation in the alleged act of bankruptcy.

Only the original of the petition need be signed and verified, but the copies must be conformed to the original. See Bankruptcy Rule 911(c).

Rule 10-106. Caption of Petition.

The caption of every petition shall comply with Bankruptcy Rule 904(b). In addition the title of the case as set forth in the caption shall include the name of the debtor and such other names used by it as are necessary to assure adequate identification.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule does not require other names used by the debtor within 6 years before the filing of the petition to be listed in the caption. Rather other names should be listed to provide adequate identification to creditors of the debtor.

Rule 10-107. Filing Fees.

Every petition shall be accompanied by the prescribed filing fees.

NOTES OF ADVISORY COMMITTEE ON RULES

Filing fees for Chapter X cases are prescribed by § 132. Additional charges may be prescribed in accordance with schedules and regulations approved by the Judicial Conference of the United States pursuant to §§ 40c(2) and (3) of the Act and 28 U.S.C. § 1914(b).

Rule 10-108. List of Creditors and Stockholders; Inventory.

(a) Lists Required.

The trustee shall, or if the debtor is retained in possession it shall, at the expense of the estate, file with the court, within such time as the court may fix, a list of the debtor's creditors of each class, showing the amounts and character of their claims and securities and, so far as known, the name and address or place of business of each creditor and whether the claim is disputed, contingent, or unliquidated as to amount, and a list of the debtor's stockholders of each class showing the number and kind of shares registered in the name of each stockholder, and the last known address or place of business of each stockholder. If the debtor is retained in possession, it shall file an inventory of its property showing the location, quantity, and money value thereof within the time fixed by the court.

(b) List of Security Holders or Information in Possession of Another Person.

If it appears that a person, other than the debtor or trustee, has in his possession or under his control a list of security holders of the debtor or information in respect to their names, addresses, or the securities held by any of them, and such list or information is necessary in order to disclose the names and addresses of the beneficial owners of such securities, or to prepare or complete the lists required by this rule, the court may direct such person, after a hearing on notice to him, to produce such list or a true copy thereof, or to permit the inspection or use thereof, or to furnish such information.

(c) Impounding of Lists.

The court may, on cause shown, direct the impounding of the lists filed under this rule, in which event—

(1) the debtor, or the trustee, or any indenture trustee, creditor or stockholder shall be permitted their inspection or use on such terms as the court may prescribe; and

(2) the court may refuse to permit such inspection by any creditor or stockholder who acquired his claim or stock within 3 months preceding the filing of a Chapter X petition or during the pendency of the Chapter X case.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (a) of this rule is derived from §§ 163 and 164 of the Act. This rule requires the same lists to be filed by either a trustee or debtor retained in possession. But only such debtor need file an inventory of property. One copy of the list or inventory is sufficient. Nothing in the Act or General Orders previously required filing more than the one original although the court would be free to require additional copies when desirable. Local rules may also provide for additional copies.

Subdivisions (b) *and* (c) of this rule are adapted from §§ 165 and 166 of the Act without change in substance.

Claims known to be disputed, contingent, or unliquidated as to amount should be so indicated on the list of creditors. See Rule 10-401(a), (b).

Rule 10-109. Verification of Petitions, Lists, and Inventories.

All lists, inventories, and amendments thereto filed by a debtor in possession and all petitions and amendments thereto shall be verified.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule combines requirements prescribed in §§ 7a(8), 18c, and 163 of the Act.

Only the original of the paper filed need be executed and verified; copies thereof, however, should be conformed to the original.

Rule 10-110. Amendments of Petitions, Lists, and Inventories.

(a) Petitions.

A voluntary or an involuntary petition may be amended as a matter of course at any time before a responsive pleading is served or the petition is approved pursuant to Rule 10-113. An amendment at any other time may be made only by leave of court. Subdivisions (b), (c), and (d) of Rule 15 of the Federal Rules of Civil Procedure apply to amendments of petitions.

(b) Lists and Inventories.

An inventory of property filed pursuant to Rule 10-108 may be amended as a matter of course at any time before confirmation of a plan. A list of creditors or stockholders filed pursuant to Rule 10-108 may be amended as a matter of course at any time before expiration of the time fixed for filing claims pursuant to Rule 10-401(b). Thereafter such a list may be amended only with leave of court on such notice as the court may direct. The court may, on application or motion of any party in interest, or on its own initiative, order any list or inventory to be amended.

(c) Number of Copies; Notice.

Every amendment under this rule shall be filed in the same number as required of the original paper, and the court shall give notice of the amendment to such persons as it may designate.

NOTES OF ADVISORY COMMITTEE ON RULES

General Order 11, from which this rule is principally derived, has required an application for leave to amend a petition or schedule. Once a petition initiating a Chapter X case is filed, other parties have a recognizable interest to appear and contest the petition. Additionally, there may have been the judicial act of approving a petition before the time for filing answers has expired. Where either there has been such approval or an answer has been filed, leave of court is necessary, under this rule, to amend the petition. Prior to either occurrence, amendment may be made as a matter of right. Rule 15(b), (c), and (d) apply to any amendments of petitions.

Subdivision (*b*) adopts a permissive approach to amendments of lists and inventories required to be filed by Rule 10-108.

Subdivision (*c*) contemplates that every amendment shall be brought to the attention of the court so that it may determine who, if anyone, should be notified of the amendment. An amendment will ordinarily be filed with the referee. See Bankruptcy Rule 509. If a copy of the petition or list being amended is retained by the clerk, a copy of each amendment should be transmitted by the referee to the clerk. Amendments should be filed in the same number as required of the original paper. Rule 10-104 requires one original and 6 copies of a petition. Rule 10-108 requires only the original of the list of creditors and stockholders and of the inventory. These numbers would control amendments; local rules should also be consulted.

Rule 10-111. Service of Petition and Process.

On the filing of an involuntary petition, the clerk of the district court, or, if filed in a pending bankruptcy case, the bankruptcy judge shall forthwith issue a summons for service on the debtor. The summons shall conform substantially to Official Form No. 10-3, and a copy shall be served with a copy of the petition in the manner provided for service of a summons, complaint, and notice of trial by Bankruptcy Rule 704 (b), (c), or (i). The summons and petition may be served anywhere. The provisions of Bankruptcy Rule 704 (e), (g), and (h) apply when service is made or attempted under this rule.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is a revision of § 133 of the Act which, in turn, incorporates § 18a of the Act. The substitution of the summons for the writ of subpoena as the process to be served on the debtor conforms the usage under the Act to that prevailing generally in civil litigation in federal courts. See 1 Collier ¶ 18.30 (1966). The modes of service prescribed by the rule are personal or by mail, when service can be effected in one of these ways in the United States. Service by either of these modes shall be made in the manner prescribed for personal service or service by mail in adversary proceedings in bankruptcy cases by Bankruptcy Rule 704(b) and (c). If service must be made in a foreign country the mode of service prescribed is one of those referred to in Bankrutcy Rule 704(i), which incorporates Rule 4(i) of the Federal Rules of Civil Procedure.

There are no territorial limits on the service authorized by this rule. Service on a bankrupt or debtor under § 18a of the Act has likewise not been limited by territorial boundaries when personal service within the state in which the court of bankruptcy sits has proved impracticable. *United States v. Kramer,* 279 F.2d 754, 83 A.L.R.2d 698 (3d Cir.), cert. denied 81 S.Ct. 167, 364 U.S. 879, 5 L.Ed. 2d 101 (1960); *Bookey v. King,* 236 F.2d 871, 877 (9th Cir. 1956); *cf. Stegeman v. United States,* 425 F.2d 984, 987 n. 4 (9th Cir. 1970). There must of course be a basis for jurisdiction of the debtor or its property in order for the court to approve the petition and to administer the estate. Although Rule 10-114(a) relates to venue rather than jurisdiction, the court would have no jurisdiction to act if none of the elements to be considered in the choice of venue could be found in the United States. *Cf.* § 2a(1) of the Act; Seligson & King, *Jurisdiction and Venue in Bankruptcy* 36 Ref.J. 36 (1962); Comment, 35 N.C.L.Rev. 476, 478 (1957).

Subdivisions (e), (g), and (h) of Bankruptcy Rule 704 govern time and proof of service, the effect of errors in service or proof thereof, and amendment of process or of proof of service.

Rule 10-112. Responsive Pleading.

(a) Time for Filing Answer.

(1) *By debtor.* The debtor may serve and file an answer to an involuntary petition within 20 days after the issuance of the summons.

(2) *By other parties.* Any creditor, indenture trustee, or stockholder may serve and file an answer to a voluntary or involuntary petition not later than 15

days before the first date set for the first meeting of creditors and stockholders provided for in Rule 10–212. A timely answer filed under this paragraph shall be deemed also to constitute a motion to vacate any prior order of approval of a petition.

(b) Contents of Answer.

The answer to a petition shall contain all defenses and objections, including those which may be raised by separate motion under Rule 12 (b), (e), or (f) of the Federal Rules of Civil Procedure. Such answer may include the statement of a claim against a petitioning creditor only for the purpose of defeating the petition.

(c) Other Responsive Pleadings.

No other responsive pleadings shall be allowed, except that the court may order a reply to an answer and prescribe the time for it to be served and filed.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is adapted from §§ 136 and 137 of the Act permitting creditors, indenture trustees, and stockholders (whether or not the debtor is insolvent) to contest a petition.

The procedure for converting a Chapter XI case to Chapter X is specified in Rule 11–15 of the Chapter XI Rules. This rule, Rule 10–112, would not govern such procedure.

Rule 10–113. Disposition of Petition; Preliminary Approval; Hearing.

(a) Voluntary Petition.

On the filing of a voluntary petition, the court shall enter an order approving the petition if satisfied that it complies with the requirements of Chapter X of the Act and has been filed in good faith. If not so satisfied, the court shall enter an order permitting the petition to be amended or dismissing the case.

(b) Involuntary Petition.

If an answer to an involuntary petition is not filed by a debtor within the time provided by Rule 10–112 (a) (1), and if no other party in interest has filed an answer within such time, or if any answer filed does not set forth any valid defense or objection to such petition, the court shall enter an order approving the petition if satisfied that it complies with the requirements of Chapter X of the Act and has been filed in good faith. If not so satisfied, the court shall enter an order permitting the petition to be amended or dismissing the case.

(c) Hearing.

(1) If no timely answer is filed the court may nevertheless hold a hearing on such notice as it may direct before approving or dismissing a petition pursuant to subdivision (a) or (b) of this rule.

(2) If a timely answer is filed, the court shall hold a hearing at the earliest practicable time on such notice as it may direct, and shall determine the issues and approve the petition, dismiss the case, or enter such other order as may be appropriate.

(d) Award of Costs

When a case commenced by the filing of an involuntary petition is dismissed pursuant to this rule, the court on reasonable notice to the petitioner or petitioners may award to the prevailing party the same costs that are allowed to a prevailing party in a civil action and reasonable counsel fees, and shall award any other sums required by the Act.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivisions (*a*) *and* (*b*) are derived from §§ 141 and 142 of the Act. In effect, the Act and these subdivisions provide for what may be a preliminary approval of a voluntary or involuntary Chapter X petition. Such approval may be only preliminary because subsequent to the entry of such an order, other parties in interest may still have time, under Rule 10–112, to contest the petition by filing an answer. The early approval is necessary, however, to begin some administration of the estate and to provide some control over the business and property of the debtor. While the court may appoint a receiver to take charge of the business or property prior to approval, a disinterested trustee must be appointed after approval, pursuant to Rules 10–201 and 10–202. Additionally, the date fixed for setting the first meeting of creditors and stockholders, under Rule 10–212, is not more than 90 days after *approval* of the petition. The time fixed for parties other than the debtor to file an answer to a Chapter X petition is, under Rule 10–112, keyed to the date set for such first meeting. In subdivision (b), the cross reference to Rule 10–112(a)(1) with regard to any party, means that if the debtor, or a creditor or stockholder does not file an answer within the time allowed a debtor to answer, preliminary approval will be forthcoming.

Subdivision (*c*) provides for the court to approve the petition or dismiss it if no answer is filed within the prescribed time. It is not necessary, however, to enter another order of approval under this subdivision if one had previously been entered under subdivision (a) or (b).

Subdivision (*c*) is a revision of §§ 143 and 144 of the Act. While §§ 143 and 144 provide for such determination "without the intervention of a jury" the rules need not carry over that directive because all hearings in the bankruptcy court are without a jury except where the Act expressly provides otherwise. Subdivision (c) also provides for a hearing on a non-contested petition but such a hearing is discretionary with the bankruptcy judge. He may approve the petition without a hearing, after an ex parte hearing at which only the debtor is present, or after hearing upon notice to such persons as the bankruptcy judge may designate.

General authority for an award of costs to a prevailing party is found in § 2a(18) of the Act. General Order 34 has provided in its first clause for the recovery by a petitioning creditor of costs where adjudication is made on a contested involuntary petition. Section 241 explicitly authorizes allowance to petitioning creditors for their costs and expenses. Subdivision (d) embodies the substance of the last clause of General Order 34, authorizing recovery of costs by the debtor in the event of dismissal, and recognizes the right of the debtor under § 69b of the Act to costs, counsel fees, and indemnification for expenses and damages caused by the action of a receiver in taking or holding its property. An award may be made under this subdivision in the event of a dismissal on account of a withdrawal of the petition as well as by reason of an involuntary dismissal. The court has discretion whether and to what extent costs should be awarded.

Except as otherwise provided in this and other rules in Part I and subject to the authority of the court to direct otherwise, the rules in Part VII that govern adversary proceedings apply direcly or may be made applicable by direction of the court, to the proceeding on a contested petition. See Rule 10–118. If the reason for not approving a petition is that the case should properly have been brought under Chapter XI of the Act, Rule 10–117 would permit either dismissal of the Chapter X case or conversion to Chapter XI with the consent of the debtor.

Rule 10–114. Venue and Transfer.

(a) Proper Venue.

(1) *Debtor*. A petition filed pursuant to Rule 10–104 or 10–105 may be filed in the district (A) where

the debtor has had its principal place of business or its principal assets for the preceding 6 months or for a longer portion thereof than in any other district; or (B) if there is no such district, in any district where the debtor has property. If a bankruptcy case is pending by or against the debtor, the petition shall be filed with the court in which that case is pending.

(2) *Affiliate.* Notwithstanding the foregoing, a petition commencing a Chapter X case may be filed by or against an affiliate of a debtor or bankrupt in a district where a petition under the Act by or against the debtor or bankrupt is pending.

(b) Transfer of Cases; Dismissal or Retention When Venue Improper.

(1) *When venue proper.* Although a petition is filed in accordance with subdivision (a) of this rule, the court may, after hearing on notice to the petitioner or petitioners and such other persons as it may direct, in the interest of justice and for the convenience of the parties, transfer the case to any other district. The transfer may be ordered at or before the first meeting of creditors and stockholders held pursuant to Rule 10–212 either on the court's own initiative or on motion of a party in interest but thereafter only on a timely motion.

(2) *When venue improper.* If a petition is filed in a wrong district, the court may, after hearing on notice to the petitioner or petitioners and such other persons as it may direct, dismiss the case or, in the interest of justice and for the convenience of the parties, retain the case or transfer it to any other district. Such an order may be made at or before the first meeting of creditors and stockholders held pursuant to Rule 10–212 either on the court's own initiative or on motion of a party in interest but thereafter only on a timely motion. Notwithstanding the foregoing, the court may without a hearing retain a case filed in a wrong district if no objection is raised.

(c) Procedure When Petitions Involving the Same Debtor or Related Debtors Are Filed in Different Courts.

If petitions commencing Chapter X cases or a Chapter X case and any other case under the Act are filed in different districts by or against (1) the same debtor, or (2) a debtor and an affiliate, the court in which the first petition is filed shall, after hearing on motion and notice to the petitioners and such other persons as the court may designate, determine the court or courts in which the case or cases should proceed in the interest of justice and for the convenience of the parties. The proceedings on the other petitions shall be stayed by the courts in which such petitions have been filed until such determination is made. Thereafter all the courts in which petitions have been filed shall proceed in accordance with the determination.

(d) Reference of Transferred Cases.

A case transferred under this rule shall, in accordance with Rule 10–103, be referred by the clerk of the district court to which it has been transferred.

NOTES OF ADVISORY COMMITTEE ON RULES

Paragraph (1) of subdivision (a) of this rule is a revision of § 128 of the Act. This statutory provision relates primarily to venue. 6 Collier, Bankruptcy ¶¶ 4.02 [2], 4.11 (1965). The revision of the statutory provision effected by the rule consists primarily in a reorganization for the purpose of clarification. The location of the principal assets as a criterion of venue for a petition by or against a corporation is derived from § 128, the general venue provision of Chapter X of the Act.

Paragraph (2) of subdivision (a) is derived from but goes considerably beyond § 129 of the Act, which authorizes a petition by or against a subsidiary to be filed in a court which has approved a Chapter X petition by or against its parent corporation. An "affiliate" is defined in Bankruptcy Rule 901(3) to include a subsidiary as defined in Chapter X of the Act (§ 106(13)), a parent corporation, and a variety of persons having connections different from those contemplated by §§ 106(13) and 129 of the Act. Joint administration of the estates of affiliates may be authorized under Rule 10–115.

Subdivision (b) of the rule incorporates the features of § 32b and c of the Act and clarifies the procedure to be followed in requesting and effecting transfer of a case. While § 32b, which deals with cases filed in the wrong court of bankruptcy, authorizes transfer only on the filing of an objection, § 32c, which deals with transfer of cases even though filed in a proper venue, curiously appears to require no objection by a party in interest. Subdivision (b) authorizes the court to transfer a case on its own initiative as well as on motion, irrespective of whether the venue is proper or improper, but protects the parties against being subjected to a transfer in either event after the first meeting of creditors except on a timely motion of a party in interest. If the transfer would result in fragmentation or duplication of administration, increase expense, or delay closing the estate, such a factor would bear on the timeliness of the motion as well as on the propriety of the transfer under the standards prescribed in subdivision (b). Section 32b, in authorizing a transfer from a wrong court to a proper court of bankruptcy, requires the judge to act in the "interest of justice," whereas § 32c authorizes the judge to transfer any case to a court of bankruptcy in any other district if the interests of the parties will be served thereby. Subdivision (b) of the rule requires the interest of justice and the convenience of the parties to be the grounds of any transfer of a case or of the retention of a case filed in a wrong district. *Cf.* 28 U.S.C. §§ 1404(a) (district court may transfer any civil action in the "interest of justice") and 1406(a) (district court "shall dismiss, or if it be in the interest of justice, transfer" a case "laying venue in the wrong division or district"). Subdivision (b) of the rule also expressly requires a hearing on notice to the petitioner or petitioners before the transfer of any case may be ordered and before a case filed in the wrong district may be dismissed, whether on the court's own initiative or on motion.

Although it has been said that under § 32 a court of bankruptcy cannot dismiss a case though filed in the wrong district, see, *e.g., In re Bankers Trust,* 403 F.2d 16, 22–23 (7th Cir. 1968); *In re Eatherton,* 271 F.2d 199, 204 (8th Cir. 1959), the rule recognizes dismissal as one of the options available to the court in such a case, as it is under the amendment of 1949 to 28 U.S.C. § 1406(a) when the wrong venue is selected for ordinary civil litigation in a federal district court. Transfer or retention would normally by in the interest of justice, however, unless the choice of the wrong venue appears deliberate and "smacks" of harassment or evidences some other element of "bad faith" on the petitioner's part. 1 Moore, Federal Practice 1909 (2d ed. 1961). If no motion objecting to venue or requesting a transfer is made, the court may retain the case without a hearing even though the venue is in fact improper. *Cf. Bass v. Hutchins,* 417 F.2d 692, 696 (5th Cir. 1969).

Section 32b and c of the Act purports to authorize only the judge to transfer a case to another court, but there is no procedure provided in either subdivision for a case that is automatically referred to the referee by the clerk pursuant to § 22a of the Act to come to the attention of the judge. Subdivision (b) vests the authority for determining the issues and entering orders thereunder in the court, which will be the referee if there has been a reference pursuant to Rule 10-103(a).

Subdivision (c) is derived from § 32a of the Act and General Order 6. It extends the procedure provided by the statute and general order for petitions in different courts involving the same bankrupt and petitions involving members of the same partnership to petitions in different courts involving affiliates as defined in Bankruptcy Rule 901(3). Subdivision (c) is correlated with paragraph (2) of subdivision (a) of this rule, which authorizes petitioners to bring cases involving affiliated debtors into a court of bankruptcy that is proper for any one of the debtors. Subdivision (c), however, makes it the responsibility of the court receiving the first of the petitions that might have been but were not filed in the same court to determine whether transfer of the cases to one court or some other disposition of them would be appropriate. The standards, "interest of justice" and "convenience of the parties," are the same as those that govern transfers under subdivision (b) of the rule and are derived from § 32a and b of the Act.

The references in subdivision (a)(2) and subdivision (c) to petitions filed "by" a partner or "by" any other of the persons mentioned are to be understood as referring to voluntary petitions. There is no purpose in either subdivision to permit cases to be filed in one court because any of the persons named therein is a creditor signing an involuntary petition.

Subdivision d. Section 32 and General Order 6, which are the sources of the provisions of subdivisions (b) and (c) of Rule 10-114 are silent as to the procedure to be followed by the court to which a case is transferred. Subdivision (d) of this rule provides for an automatic reference in consonance with the procedure prescribed for handling cases originally filed in a court of bankruptcy.

Transfer of adversary proceeding. Transfers of adversary proceedings in bankruptcy are governed by Bankruptcy Rule 782.

Rule 10-115. Joint Administration of Cases Pending in Same Court.

(a) Cases Involving 2 or More Related Debtors.

If 2 or more petitions are pending in the same court by or against a debtor and an affiliate, the court may order a joint administration of the estates. Before making such an order, the court shall give due consideration to the protection of creditors and stockholders of the different estates against potential conflicts of interest.

(b) Expediting and Protective Orders.

When an order for joint administration of 2 or more cases is entered pursuant to this rule, the court, while protecting the rights of the parties under the Act, may make such orders as may tend to avoid unnecessary costs and delay.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (a) recognizes the appropriateness of joint administration in cases where petitions concerning a debtor corporation and an affiliate are pending. "Affiliate" is defined in Bankruptcy Rule 901(3).

The authority of the court to order joint administration under subdivision (a) extends equally to the situation where the petitions are filed under different rules, *e.g.*, where one petition is voluntary and the other involuntary, as to that where all the petitions are filed under the same rule.

This rule does not deal with the consolidation of cases involving two or more separate debtors. Although consolidation may sometimes be appropriate, as when the affairs of a debtor corporation and an affiliate are so intermingled that the court cannot separate their assets and liabilities, such consolidation as distinguished from joint administration, is neither authorized nor prohibited by this rule since the propriety of consolidation depends on substantive considerations and affects the substantive rights of the creditors of the different estates. For discussion of elements which may lead to proper substantive consolidation, see *Chemical Bank N.Y. Trust Co.* v. *Kheel*, 369 F.2d 845 (2d Cir. 1966); Seligson & Mandel, *Multi-Debtor Petition—Consolidation of Debtors and Due Process of Law*, 73 Com. L.J. 341 (1968). Kennedy, Insolvency and the Corporate Veil in the United States in Proceedings of the 8th International Symposium on Comparative Law 232, 248-55 (1971).

Joint administration as distinguished from consolidation may include combining the estates to the extent that a single docket may be used for the matters occurring in the administration, including the listing of filed claims, the combining of notices to creditors of the different estates, and other purely administrative matters which may aid in expediting the cases and rendering the process less costly. A joint administration is purely for procedural purposes under this rule.

The rule does not deal with filing fees when an order for the joint administration of estates is made. *Cf.* Rule 10-107.

Rule 10-116. Debtor Involved in Foreign Proceeding.

Bankruptcy Rule 119 applies in Chapter X cases.

Rule 10-117. Conversion to Chapter XI.

Whenever, after hearing on such notice as the court may direct, the court finds that adequate relief can be obtained under Chapter XI of the Act, the court may dismiss the Chapter X case or, with the consent of the debtor, direct that the case proceed under Chapter XI.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is derived from § 147 of the Act. It contemplates the possibility of converting a Chapter X case either when the petition is under consideration for approval or at some later stage in the case after the petition has been approved. The conversion can take place only with the consent of the debtor, in keeping with the voluntary nature of a Chapter XI case. The effect of such conversion, once directed, is governed by the Chapter XI rules.

Reference should also be made to Rule 10-308 which permits conversion to Chapter XI upon the occurrence of one of the events specified therein, but again, only with the consent of the debtor.

Rule 10-118. Applicability of Rules in Part VII of the Bankruptcy Rules.

Except as otherwise provided in Part I of these rules and unless the court otherwise directs, the following rules in Part VII of the Bankruptcy Rules apply in all proceedings relating to a contested petition: Rules: 705, 708-710, 716, 724-726, 728-737, 744.1, 752, 756, and 762. The court may direct that one or more of the other rules in Part VII shall also apply in such a proceeding. For the purposes of this rule a reference in the rules in Part VII to adversary proceedings shall be read as a reference to proceedings relating to a contested petition, and a reference in the Federal Rules of Civil Procedure to the complaint shall be read as a reference to the petition.

NOTES OF ADVISORY COMMITTEE ON RULES

The rules in Part VII to which this rule refers are adaptations of the Federal Rules of Civil Procedure for the purpose of governing the procedure in adversary proceedings in cases under the Bankruptcy Act. See the Note accompanying Bankruptcy Rule 701. Because of the special need for dispatch and expedition in the determination of the question of approval of the petition, the objective of some of the Federal Rules of Civil Procedure and their adaptations in Part VII to facilitate the settlement of multiple controversies involving many persons in a single law suit is not compatible with the exigencies of bankruptcy administration. For that reason such rules as 713, 714, 718, 719, 720, 721, 722, and 723, would be rarely if ever appropriate for application in a proceeding on a contested petition.

Certain terms used in the Federal Rules of Civil Procedure have altered meanings when they are made applicable in cases under the Bankruptcy Act by these rules. See Bankruptcy Rule 902. This Rule 10–118 requires that the terms "adversary proceedings" when used in the rules in Part VII and "complaint" when used in the Federal Rules of Civil Procedure be given altered meanings when they are made applicable to proceedings relating to a contested petition.

A contested Chapter X petition may be either a voluntary petition or an involuntary petition. Amendments of voluntary and involuntary petitions are governed by Rule 10–110(a).

PART II.—OFFICERS FOR ADMINISTERING THE ESTATE; NOTICES; MEETINGS; EXAMINATIONS; COMMITTEES; ATTORNEYS AND ACCOUNTANTS

Rule 10–201. Appointment and Duties of Receivers.

(a) When Receiver May Be Appointed.

The court may appoint a receiver only before approval of a petition and, subject to the provisions of this rule, when necessary in the best interest of the estate (1) to take charge of the property of a debtor; (2) to conduct the business of the debtor; or (3) to afford representation to the estate in an action, adversary proceeding, or contested matter.

(b) Application for Appointment.

An application for appointment of a receiver shall state the specific facts showing the necessity for the appointment.

(c) Appointment.

(1) When an involuntary petition is filed, appointment of a receiver may be made only on application. The application may be granted only after hearing on notice to the debtor and such other parties in interest as the court may designate, except that a receiver may be appointed without notice if irreparable loss to the estate may otherwise result. An application for appointment of a receiver without notice and any order of appointment made without notice shall state what loss may result and why it would be irreparable.

(2) When a voluntary petition is filed, the court may appoint a receiver on application or on its own initiative. Such appointment shall be made only after notice to such persons as the court may designate, unless it clearly appears that notice is impracticable or unnecessary.

(d) Bond of Applicant.

No receiver may be appointed under subdivision (c)(1) of this rule unless the applicant furnishes a bond in such amount and with such surety as the court shall approve, conditioned to indemnify the debtor for the costs, counsel fees, expenses, and damages occasioned by the appointment and action of the receiver in the event the petition is dismissed. The property of the debtor shall be released, however, if it files a counter-bond in such amount and with such surety as the court shall approve, conditioned that the debtor account for and turn over such property or pay to the trustee or estate the value thereof in money at the time of release, in the event the petition is approved.

(e) Eligibility.

Only a person eligible to be a trustee under Bankruptcy Rule 209(d) may be appointed a receiver.

(f) Order of Appointment.

An order appointing a receiver shall state why the appointment is necessary and shall specify his duties. A copy of every order appointing a receiver shall forthwith be delivered to the debtor, or mailed to it at its last known address, and to such other persons as the court may designate.

(g) Notice of Appointment; Qualification.

The court shall immediately notify the receiver of his appointment, inform him of how he may qualify, and require him forthwith to notify the court of his acceptance or rejection of the office. A receiver shall qualify as provided in Rule 10–204.

(h) Termination of Appointment.

The appointment of a receiver shall be terminated when the trustee qualifies, the debtor is continued in possession, or there is no further need for a receiver. On termination of his appointment and unless otherwise ordered, the receiver shall forthwith turn over to the trustee or debtor in possession all the records and property of the estate in his possession or subject to his control as receiver and file his final report and account within 30 days.

(i) Removal.

The court may at any time, without or on cause shown, remove a receiver.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (a) is derived from § 2a (3) and (5) of the Act which are applicable in reorganization cases by virtue of §§ 102, 112. This rule contemplates that receivers will rarely be appointed. There is general agreement that a prolonged receivership is not compatible with Chapter X, and this rule is not intended to encourage receiverships. A receiver may be appointed only prior to approval of the petition and, pursuant to Rule 10–113, a preliminary approval would ordinarily occur quickly. When delay occurs in such approval, a receiver may be necessary. Actually, receiverships are discouraged because in a voluntary case, approval of the petition normally occurs forthwith; in an involuntary case, the applicant must furnish a bond and this should tend to discourage applications.

Subdivisions (b), (c) and (f) are new. The policy expressed in § 2a(3) of authorizing appointment of receivers only in cases of necessity is preserved and reinforced by the provisions in subdivisions (b) and (f) of the rule requiring the application for a receiver and the order of appointment to state why the appointment is necessary.

Subdivision (d) is derived from § 69a of the Act and includes clarifying language from Official Form No. 8. Rule 925 applies to any proceeding to enforce liability on a bond given pursuant to this subdivision.

Rule 10–204, to which subdivision (g) refers, incorporates the requirements respecting a receiver's bond set out in § 50b and h of the Act.

Under *subdivision (h)* a receivership will be terminated automatically upon the happening of the events therein specified. An order of termination would not be necessary.

Paragraphs (1) and (2) of *subdivision (c)* differentiate between appointment of a receiver in a case commenced by voluntary or involuntary petition in recognition of the fact that under an involuntary petition prior to its approval, the divestment of the debtor's title to his property has not yet been legally established. Under a voluntary petition, there is at least consent. The restriction of subdivision (c)(1) against appointment of a receiver without notice unless irreparable loss would otherwise result to the estate codifies a limitation applied by the courts under § 2a(3) of the Act. See *In re Press Printers & Publishers, Inc.*, 12 F.2d 660, 661 (3d Cir. 1926), cert. denied, 48 S.Ct. 339, 276 U.S. 633, 72 L.Ed. 742 (1928); 1 Collier ¶ 2.26 (1968). Appointment of a receiver without prior notice is made the exception when a voluntary or an involuntary petition is filed, and subdivision (f) provides for prompt notice to the debtor of any appointment of a receiver after it has been made.

Rule 10-202. Appointment of Trustee.

(a) Appointment.

On approval of a petition, the court shall, if the indebtedness of a debtor, liquidated as to amount and not contingent as to liability, is $250,000 or over, promptly and on its own initiative, appoint one or more trustees; if such indebtedness is less than $250,000, the court may appoint one or more trustees or continue the debtor in possession.

(b) Notice of Appointment; Qualification.

The court shall immediately notify the trustee of his appointment, inform him of how he may qualify, and shall require him forthwith to notify the court of his acceptance or rejection of the office. A trustee shall qualify as provided in Rules 10–204.

(c) Eligibility.

(1) A trustee shall be disinterested and shall be competent to perform the duties of his office. If a corporation, it shall be authorized by its charter to act as trustee.

(2) A person shall not be deemed disinterested if (A) he is a creditor or stockholder of the debtor; (B) he is or was an underwriter of any of the outstanding securities of the debtor or within 5 years prior to the date of the filing of the petition was the underwriter of any securities of the debtor; (C) he is, or was within 2 years prior to the date of the filing of the petition, a director, officer, or employee of the debtor or any such underwriter, or an attorney for the debtor or such underwriter; or (D) it appears that he has, by reason of any other direct or indirect relationship to, connection with, or interest in the debtor or such underwriter, or for any reason an interest materially adverse to the interests of any class of creditors or stockholders. Representation of a creditor or stockholder of the debtor in a matter other than one which may become involved in the Chapter X case need not be deemed of itself to affect the disinterestedness of an attorney.

(d) Appointment of Co-Trustees or Substitute Trustees; Removal; Hearing.

(1) The court may, at any time, appoint co-trustees, remove trustees and appoint substitute trustees, or terminate the debtor's possession and appoint a trustee or trustees.

(2) When the indebtedness of a debtor as specified in subdivision (a) of this rule is less than $250,000, the court may, at any time, terminate the appointment of a trustee or trustees and restore the debtor to possession.

(3) Within 90 days after each appointment or restoration of the the debtor to possession under paragraph (1) or (2) of this subdivision, the court shall hold a hearing on at least 10 days' notice to the persons entitled to receive notices under Rule 10–209 to consider objections to the retention in office of the trustee or continuance of the debtor in possession.

(e) Majority Vote.

Whenever there are 2 or more trustees, they may act by majority vote.

Notes of Advisory Committee on Rules

Subdivisions (*a*), (*c*), and (*d*) are derived from §§ 156, 158, 159, and 160 of the Act. They continue the requirements for the appointment of a disinterested trustee as defined in subdivision (c), in all cases where the indebtedness is $250,000 or more as well as the permissibility of continuing the debtor in possession where the indebtedness is less than that amount.

Subdivision (*b*) is comparable to Bankruptcy Rule 209 (c) providing for immediate notification to the trustee of his appointment. To qualify, the trustee must comply with Rule 10–204 regarding the filing of the bond.

While *subdivision* (*c*) (2) lists what were the statutory guidelines for a determination of disinterestedness, they are not exclusive. The court on other bases may find a particular person lacking in disinterestedness. It is not necessary, however, that an attorney who may have represented a creditor or stockholder in a matter unconnected with the Chapter X case should automatically be deemed disinterested and disqualified to act as trustee or attorney for the trustee. The exception is not meant to encourage the appointment of such an attorney but may be utilized when there is real need.

The label of additional trustee, used in § 156 of the Act to denote an operating officer of the debtor, is not retained by this rule. No label is substituted for such a person; thus if one is appointed a trustee, he would have to meet the requirements of disinteresedness in subdivision (c) (2) as would any co-trustee or substitute trustee appointed under this rule.

Subdivision (*e*) is derived from § 47 of the Act.

Rule 10–203. Trustees for Estates When Joint Administration Ordered.

(a) Appointment of Trustees for Estates Being Jointly Administered.

If the court orders a joint administration of 2 or more estates pursuant to Rule 10–115(a), it may appoint one or more common trustees or separate trustees for the estates being jointly administered. Common trustees shall not be appointed unless the court is satisfied that parties in interest in the different estates will not be prejudiced by conflicts of interest of such trustees.

(b) Separate Accounts.

The trustee or trustees of estates being jointly administered shall nevertheless keep separate accounts of the property of each estate.

Notes of Advisory Committee on Rules

This rule recognizes that economical and expeditious administration of two or more estates may be facilitated by the selection of a single trustee whenever estates are being jointly administered pursuant to Rule 10–115.

Subdivision (*b*) is derived from § 5e of the Act and extends the duty of keeping a separate account for each estate to trustees in all cases of joint administration.

When a conflict of interest materializes, the court must take special and appropriate action to deal with it.

Joint administration may include combining the estates to the extent that a single docket may be used for the matters occurring in the administration, including the listing of filed claims, the combining of notices to creditors of the different estates, and other purely administrative matters which may aid in expediting the cases and rendering the process less costly.

This rule does not in any way limit the requirement of Rule 10–202 that the trustee be disinterested. A trustee appointed to administer more than one estate has to be disinterested with respect to each estate being jointly administered.

Rule 10–204. Qualification by Trustee and Receiver.

(a) Qualifying Bond or Security.

Except as provided hereinafter, every trustee and every receiver shall, before entering on the performance of his official duties and within 5 days after his appointment, qualify by filing a bond in favor of the United States conditioned on the faithful performance of his official duties or by giving such other security as may be approved by the court.

(b) Amount of Bond and Sufficiency of Surety.

The court shall determine the amount of the bond and the sufficiency of the surety for each bond filed under this rule.

(c) Filing of Bond; Proceeding on Bond.

Unless otherwise provided by local rule, a bond given under this rule shall be filed with the court. A proceeding on the bond of a trustee or receiver may be brought by any party in interest in the name of the United States for the use of the person injured by the breach of the condition. No proceeding shall be brought on a trustee's or receiver's bond more than 2 years after his discharge.

(d) Evidence of Qualification; Debtor Continued in Possession.

A certified copy of the order approving the bond or other security given by a trustee or receiver under subdivision (a) of this rule shall constitute conclusive evidence of his appointment and qualification. Whenever evidence is required that a debtor is a debtor in possession, the court may so certify and the certificate shall constitute conclusive evidence of that fact.

Notes of Advisory Committee on Rules

Subdivision (*a*) of this rule is based on § 50b of the Act but recognizes that security other than a bond may be given by a trustee or receiver as a mode of qualifying under the rule.

Subdivision (*b*) vests general authority and responsibility in the court for determining the adequacy of the bond and the sufficiency of the sureties thereon in lieu of the detailed provisions in subdivisions b, c, d, e, f, and g of § 50 of the Act that deals with these matters.

Subdivision (*c*) is derived from §§ 50h and m of the Act. The sentence requiring the bond generally to be filed with the court, rather than the clerk of the court as provided in § 50h, is consonant with the provision in Bankruptcy Rule 509(a) that after reference all papers shall be filed with the referee. If there has been an automatic reference pursuant to Rule 10–103(a)(1), or a general reference as authorized by Rule 10–103(a)(2), the bond should be filed with the referee as the bond of a trustee in bankruptcy is filed pursuant to Bankruptcy Rule 212(f). Otherwise, the bond should be filed with the clerk of the district court. A proceeding on the bond of a trustee or receiver is governed by the rules in Part VII of the Bankruptcy Rules. See the Note accompanying Bankruptcy Rule 701. See also Bankruptcy Rule 925.

Subdivision (*d*) is a revision of § 21e of the Act to prescribe the evidentiary effect of a certified copy of an order approving any security given by a trustee or receiver under this rule or a certificate that the debtor has been retained in possession. A certified copy of the order approving the trustee's bond may be recorded in accordance with Rule 10–602 and given the effect of constructive notice of the pendency of the bankruptcy case as provided in § 21g of the Act.

The requirement of a referee's bond is abolished by Bankruptcy Rule 502 which conforms to Public Law 92–301, enacted June 6, 1972, repealing the provisions of § 50 of the Act that refer to referees' bonds. The bond of a designated depository is dealt with in Bankruptcy Rule 512. The provision in § 50k of the Act stating the effect of a failure to file a bond is omitted from the rules as unnecessary.

Rule 10–205. Substitution of Successor Trustee or Receiver.

When a trustee or receiver dies, resigns, is removed, or otherwise ceases to hold office during the pendency of a Chapter X case, his successor is automatically substituted as a party in any pending action, proceeding, or matter without abatement.

Notes of Advisory Committee on Rules

This rule is an elaboration of § 46 of the Act. The reference in § 46 to a "joint receiver" is omitted from this rule by virtue of the fact that no more than one receiver is authorized to be appointed under Rule 10–201. Rule 725, which governs the substitution of parties in adversary proceedings, is correlated with this rule.

Rule 10–206. Employment of Attorneys and Accountants.

(a) Conditions of Employment of Attorneys and Accountants.

Bankruptcy Rule 215 applies to the employment, in Chapter X cases, of attorneys and accountants by a trustee, receiver, or debtor in possession. In addition, an attorney appointed to represent a trustee shall be disinterested as specified in Rule 10–202(c)(2). Notwithstanding the foregoing, the court may, when it is in the best interest of the estate, authorize the employment for special purposes to be set out in the order, other than to represent the trustee in conducting the case, of an attorney who is not disinterested provided that such attorney represents or holds no interest adverse to the estate in the matters upon which he is to be engaged.

(b) Employment of Attorney Not Disinterested.

Any attorney who was not disinterested as required by subdivision (a) of this rule and who failed to disclose any material fact on the question of his disinterestedness may be denied the allowance of compensation or reimbursement of expenses, or both, and any allowance to the trustee may also be denied if it shall appear that he failed to make diligent inquiry into the connections of such attorney.

Notes of Advisory Committee on Rules

Bankruptcy Rule 215 applies generally in Chapter X cases. The exceptions specified in this rule are additional provisions to those set forth in the bankruptcy rule.

Subdivision (*a*) continues the statutory requirements that an attorney for a Chapter X trustee must be disinterested. The elements of disinterestedness are contained in Rule 10–202(c)(2). It is not necessary, however, that an attorney who may have represented a creditor or stockholder in a matter unconnected with the Chapter X case should automatically be deemed not disinterested. For example, a large law firm may be on general retainer with a creditor but a partner thereof, wholly unconnected with the client may be a very suitable candidate for selection as attorney for the trustee. If there are no other facts to militate against it, he should be considered disinterested, particularly if his law firm declines to represent that creditor in the Chapter X case. This exception, however, is not meant to encourage the appointment of attorneys who represent a creditor or stockholder. If other competent attorneys are available, the trustee's attorney should be selected from that group. This exception should be utilized only in the case where there is real need. And even if such an attorney is considered, it remains important to determine whether he is disqualified on any other ground for having an adverse interest.

In the fourth sentence of subdivision (a), the reference to "conducting the case" includes those matters which form a part of administering a Chapter X case, *e.g.*, assisting in formulating a plan, and assisting the trustee in carrying out the required investigations. Special purposes which may be set out in the order, other than conducting the case, could be a situation where it is advisable to retain an attorney who has been employed by the debtor to handle a specific legal action for which that attorney may be particularly suited.

The second addition, in subdivision (b) of this rule, includes as a factor in denying compensation and reimbursement that the attorney, required to be disinterested, in fact was not, or that he failed to disclose some material fact which would make him not disinterested.

The disinterested attorney appointed to represent a trustee will normally be appointed on a general retainer. The court could, however, authorize in the order the appointment only for purposes specified therein.

Rule 10-207. Authorization of Trustee, Receiver, or Debtor in Possession To Conduct Business of Debtor.

The court may authorize the trustee, receiver, or debtor in possession to conduct the business and manage the property of the debtor for such time and on such conditions as may be in the best interest of the estate.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is derived from § 189 of the Act. Continuation of the business represents the norm in Chapter X cases as distinguished from a liquidation of an estate as is usually contemplated in bankruptcy cases.

Among the conditions which a court may impose would be the requirement that the debtor, when it is permitted to remain in possession, post an indemnity bond against any loss incurred in the operation of the business should the case later be converted to bankruptcy. Permitting the imposition of conditions is for the protection of public investors and creditors and goes beyond § 189 of the Act in affording greater protection. It, additionally corresponds more closely to § 342 of the Act which also allows, when necessary, greater protection to the estate involved.

Rule 10-208. Duty of Trustee and Debtor in Possession To Investigate, Make Reports, Furnish Information, and Prepare Plans; Examiners.

(a) Trustee.

A trustee shall (1) file the lists as required by Rule 10-108; (2) unless otherwise ordered, make a report at the meeting provided for in Rule 10-212 which shall include a summary of his operations of the business and management of the property; (3) file with the court within the times fixed by the court, periodic reports and summaries of the operations of the business and such other information as may be required by the court; (4) investigate the acts, conduct, liabilities and financial condition of the debtor, the operation of its business and the desirability of the continuance thereof, and any other matter relevant to the case or to the formulation of a plan; (5) file a report with the court concerning any facts ascertained by him pertaining to fraud, misconduct, mismanagement, and irregularities, and to any causes of action available to the estate; (6) if the court so authorizes, examine the directors and officers of the debtor and any other witnesses concerning the foregoing matters; (7) as soon as practicable, file a statement of his investigations, and cause copies or a summary thereof to be mailed to the creditors, stockholders, indenture trustees, the Securities and Exchange Commission, and such other persons as the court may designate; (8) notify creditors and stockholders that they may submit to him plans or suggestions for the formulation of a plan, within a time fixed by him in such notice; (9) file a plan or report as required by Rule 10-301(c)(1); (10) within 30 days after the date of the order confirming the plan or within such other time as the court may fix, file a report with the court concerning the action taken by him and the progress made in the consummation of the plan and file such further reports as the court may direct until the plan has been consummated; and (11 after consummation of a plan, file an application for a final decree showing that the plan has been consummated, and the names and addresses, if known, of the holders of claims or interests which have not been surrendered or released in accordance with the provisions of the plan and the nature and amounts of such claims or interests, and such other facts as may be necessary to enable the court to pass upon the provisions to be included in the final decree.

(b) Debtor in Possession; Examiner.

If a debtor is continued in possession it shall perform the duties specified in subdivision (a)(9) and such other duties specified in subdivision (a) of this rule as directed by the court or the court may appoint a disinterested person as specified in Rule 10-202(c) as examiner to perform all or any of such duties.

(c) Transmission of Reports; Form.

The court shall direct copies or summaries of annual reports, and may direct copies or summaries of other reports, to be mailed to the creditors, stockholders, and indenture trustees, and may also direct the publication of summaries of any such reports. The Securities and Exchange Commission may recommend the form of such reports and summaries.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule combines provisions found in §§ 167 and 168 of the Act and in various local rules of district courts throughout the country. For examples of the duties imposed upon the trustee under clauses (2), (3), (10), and (11), see Bankr.R. X-11, X-21, E.D. & S.D.N.Y.; Bankr.R. 217, S.D.Cal. While the report of clause (10) is derived from local rule, it is desirable that the court be informed of progress toward consummation. As practicable, reports and notices may be combined. See Bankruptcy Rule 907.

Section 168 of the Act permits the court to appoint an examiner if the debtor is retained in possession to perform such of the duties of a trustee as the court directs. Subdivision (b) of this rule permits the court either to direct the debtor in possession or an examiner to perform such duties.

The statement required by clause (7) should be submitted first to the court for approval of its contents.

See also Bankruptcy Rule 218 and accompanying Note.

Subdivision (c) is derived from the last 2 sentences of § 190 of the Act. The substance of the first sentence thereof is incorporated within the provisions of subdivision (a) of this rule and Bankruptcy Rule 508 making all filed papers open for public examination. For the method of publication, see Bankruptcy Rule 908.

This rule and Rules 10-209, and 10-301 refer to the trustee's duty to seek suggestions from creditors and stockholders for the formulation of a plan. Rule 10-208 imposes that obligation on the trustee, Rule 10-209 is a compilation of the notices that are generally transmitted, and Rule 10-301 empowers the submission of such suggestions.

Rule 10–209. Notices to Creditors, Stockholders, and United States.

(a) Notice of First Meeting of Creditors and Stockholders.

The trustee, receiver, or debtor in possession shall give all creditors, stockholders, indenture trustees, and such other persons as the court may designate, at least 30 days' notice by mail of the meeting held pursuant to Rule 10–212. Such notice shall conform substantially to Official Form No. 10–5.

(b) Twenty-Day Notice to all Creditors and Parties in Interest.

Except as provided in subdivision (f) of this rule, the trustee or debtor in possession shall give all creditors, stockholders, and indenture trustees, at least 20 days' notice by mail of (1) the hearing on the rentention in office of a trustee or trustees appointed at the meeting held pursuant to Rule 10–212; (2) the hearing on approval of a compromise or settlement of a controversy, unless the court for cause shown directs that notice not be sent; (3) the hearing on the dismissal or conversion to bankruptcy of a case when notice is required by Rule 10–308; (4) any proposed sale of property, other than in the ordinary course of business, including the time and place of any public sale, unless the court for cause shown shortens the time or orders a sale without notice; (5) the time fixed for filing objections to confirmation of a plan; (6) the hearing on applications for allowances of compensation and reimbursement of expenses; and (7) the time fixed for submitting plans or suggestions for the formulation of a plan to the trustee. The notice of a proposed sale of property, including real estate, is sufficient if it generally describes the property to be sold. The notice of a hearing on an application for compensation or reimbursement of expenses shall specify the applicant and the amount requested.

(c) Other Notices to all Creditors and Parties in Interest.

Except as provided in subdivision (f) of this rule, the trustee, receiver, or debtor in possession shall give notice by mail to the debtor, all creditors, stockholders, and indenture trustees of (1) dismissal of the case pursuant to Rule 10–308; (2) except as to stockholders, the time fixed for filing proofs of claim pursuant to Rule 10–401(b)(1); (3) the hearing on approval of a plan pursuant to Rule 10–303(a); (4) the time fixed for accepting a plan pursuant to Rule 10–303(d); (5) the time fixed to reject a modification of a plan pursuant to Rule 10–306(b); (6) the hearing on approval of a modification of a plan pursuant to Rule 10–306(b); (7) the hearing on confirmation of a plan pursuant to Rule 10–307(a)(2); and (8) confirmation of a plan pursuant to Rule 10–307(a)(2).

(d) Addresses of Notices.

All notices to which a creditor, stockholder, or indenture trustee is entitled under these rules shall be addressed to such person as he or his authorized agent may direct in a request filed with the court; otherwise, to his address shown in the lists or, if a different address is stated in a proof of claim duly filed, then at the address so stated.

(e) Notices to the United States.

Copies of notices required to be mailed to all creditors under these rules shall be mailed (1) to the Securities and Exchange Commission at Washington, District of Columbia, and at such other place as it shall designate in writing filed with the court; (2) to the district director of internal revenue for the district in which the case is pending; (3) to the Secretary of the Treasury if the filed papers disclose a stock interest of the United States; and (4) whenever the lists or any other paper filed in the case discloses a debt to the United States other than one for taxes, to the United States attorney for the district in which the case is pending and, if disclosed by the filed papers, to the department, agency, or instrumentality of the United States through which the debtor became so indebted.

(f) Notice by Publication.

If the court finds that notice to creditors and stockholders by mail as provided in this rule cannot be given or that it is desirable to supplement such notice, the court may order publication thereof.

(g) Orders Designating Matter of Notices.

Except as otherwise provided by these rules, the court may from time to time enter orders designating the matters in respect to which, the persons to whom, and the form and manner in which notices shall be sent.

(h) Caption.

The caption of every notice given under this rule shall comply with Rule 10–106.

Notes of Advisory Committee on Rules

This rule collects the provisions for notices specifically applicable to creditors and stockholders in Chapter X cases.

Subdivision (*a*) requires that creditors, stockholders and indenture trustees get 30 days' notice of the first meeting of creditors and stockholders. See Rule 10–212 and accompanying Note. Official Form No. 10–5 also requires that the notice of the first meeting indicate whether a trustee has been appointed or the debtor continued in possession. Thus, creditors and stockholders may file objections which can be heard at the first meeting. If no trustee has as yet been appointed the notice is to indicate that one will be appointed at the first meeting. Another opportunity will be afforded to raise any objections to the trustee so appointed as provided in subdivision (b) of this rule.

Subdivision (*b*) requires that all creditors, stockholders and indenture trustees get 20-day notices by mail of the significant events in a Chapter X case.

The requirements of subdivisions (a) and (b) are satisfied if the notices they prescribe are deposited in the mail at least 30 or 20 days before the event of which notice is to be given, even though the notice is received within the prescribed period. See 3 Collier 494 (1971). Notice is complete upon mailing. Bankruptcy Rule 906(e).

If a meeting of creditors and stockholders is adjourned before its conclusion, no notice of the adjourned date is required to be given to creditors under this rule. Treatment of the adjournment as a continuance of the meeting conforms to established and approved practice under the Act. 3 Collier 11–12 (1964).

The time limits prescribed by subdivisions (a) and (b) cannot be reduced except to the extent and under the conditions stated in this rule. See Bankruptcy Rule 906(c).

Subdivision (*d*) recognizes that an agent authorized to receive notices for a creditor or stockholder, may, without a court order, designate how notices to the creditor or stockholder he represents should be addressed. Such an agent includes an officer of a corporation, an attorney at law, or an attorney in fact if the requisite authority has been given him.

Subdivision (e) is a revision of §§ 161, 265, and 266 of the Act. The premise of the requirement that the district director of internal revenue receive all notices that creditors receive under subdivisions (a), (b), and (c) is that very debtor is at least potentially a tax debtor of the United States. Notice to the district direcor alerts him to the possibility that a tax debtor's estate is undergoing reorganizaion. Where other indebtedness to the Federal government is indicated, the United States attorney or appropriate department or agency is to receive the various notices. If stock is held by the government, notices are to be sent to the Secretary of the Treasury. All notices are also required to be transmitted to the Securities and Exchange Commission. This rule is not intended to preclude a local rule from requiring a state or local tax authority to receive some or all of the notices creditors are entitled to receive under subdivisions (a), (b) and (c).

Subdivision (f) specifies two kinds of situations in which notice by publication may be appropriate; (1) when notice by mail is not possible; and (2) when notice by mail alone is less than adequate. Notice by publication can be substituted for mail when, for example, there are creditors for whom addresses are unavailable. Supplementation of notice by mail is indicated when the debtor's records are incomplete or inaccurate and it is reasonable to believe that publication may reach some of the creditors who would otherwise be missed. Bankruptcy Rule 908 applies when the court directs notice by publication under this rule.

Subdivision (g) is derived from § 207 of the Act. This subdivision provides some flexibility for the court in determining the form, manner, content, and persons to whom notices are to be sent. Entry of orders under this subdivision may tend to avoid useless notices and clarify rights of persons to receive notices. Those persons with standing to be heard under Rule 10–210 may apply to the court for an order designating them as recipients of notice in the case. See 6A Collier ¶ 9.26 (1965).

As noted in connection with Rule 10–106, the disclosure requirement in subdivision (h) of this rule follows the practice established in some districts by local rule. Inclusion in notices to creditors of information as to other names used by the bankrupt will assist them in the preparation of their proofs of claim.

Rule 10–210. Standing To Be Heard; Intervention.

(a) Standing To Be Heard.

(1) The debtor, the indenture trustees, and any creditor or stockholder of the debtor shall have the right to be heard on all matters arising in a Chapter X case.

(2) A labor union or employees' association, representative of employees of the debtor, shall have the right to be heard on the economic soundness of a plan affecting the interests of the employees.

(b) Intervention.

The Court may for cause shown permit any interested person to intervene generally or with respect to any specified matter in the Chapter X case.

(c) Securities and Exchange Commission.

The Securities and Exchange Commission may, or if requested by the court shall, intervene in a Chapter X case. On the filing of a notice of intervention, the Commission shall be deemed a party in interest with the right to be heard on all matters in the case except that it may not appeal to the court of appeals from any order of the district court.

(d) Notices to the Securities and Exchange Commission.

In addition to the notices and papers required by these rules, the court shall transmit to the Securities and Exchange Commission at Washington, District of Columbia, and at such other place as it shall designate in writing filed with the court (1) notice of all other steps taken in connection with the case, (2) answers, if any, to a petition commencing a Chapter X case, (3) orders approving or dismissing petitions, (4) orders determining the division of creditors and stockholders into classes, (5) orders approving a plan or plans or modifications of plans, (6) orders confirming plans together with copies of such plans, (7) orders making or refusing allowances for compensation and expenses, (8) the order determining the debtor to be solvent or insolvent, (9) orders directing that the case be converted to bankruptcy or dismissing the case, and (10) such other papers filed in the case as the Securities and Exchange Commission may request or which the court may direct be transmitted to it. Copies of opinions or reports, if any, with respect to the matters enumerated above shall also be transmitted to the Securities and Exchange Commission.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (a) is derived from § 206 of the Act. That section was originally enacted to broaden the practice that had developed under former § 77, the predecessor statute to Chapter X, which limited the right to be heard of creditors and stockholders. This broader concept was to insure fair representation and to prevent excessive control over the proceedings by insider groups. That approach is continued by this rule.

Subdivision (b) is derived from the first sentence of § 207. While the statutory application is somewhat unclear, its purpose is to permit the court to allow intervention of a person not otherwise entitled under § 206, or subdivision (a) of this rule. Such a party seeking to intervene must show some reason therefor, *e.g.*, an interest in property of the debtor being dealt with by the plan. Where intervention is permitted, the court should also provide for future notice to be given to such party pursuant to Rule 10–209(g) but the type of notice would be limited by the form of intervention, whether it was permitted generally or only for a specified matter.

An interested person, referred to in subdivision (b), may be one other than a party in interest. For example, the state government or a municipal corporation may have an interest in the continued viability of the debtor or its reorganization without being a creditor or stockholder.

Subdivision (c) is derived from § 208 of the Act. Under this section and the rule the SEC may or must intervene but has no right of appeal. An application to intervene is subject to the discretion of the court but an abuse of discretion resulting in a denial of approval of the application would be a ground upon which the SEC could appeal from such denial.

Subdivision (d) is derived from § 265a of the Act and will assist in enabling the Securities and Exchange Commission to be kept fully informed of all that occurs in a Chapter X case.

Rule 10–211. Representation of Creditors and Stockholders.

(a) Data Required.

Every person or committee representing more than one creditor or stockholder, and every indenture trustee, shall file a signed statement with the court setting forth (1) the names and addresses of such creditors or stockholders; (2) the nature and amounts of their claims or stock and the time of acquisition thereof unless they are alleged to have been acquired more than one year prior to the filing of the petition; (3) a recital of the pertinent facts and circumstances in connection with the employment of such person or indenture trustee, and, in the case of a committee, the name or names of the person or persons at whose instance, directly or indirectly, such employment was arranged or the committee was organized or agreed to act; and (4) with reference to the time of the employment of such person, or the organization or formation of such committee, or the appearance in the case of any indenture trustee, a showing of the amounts of claims or stock owned by such person, the members of such committee or such indenture trustee, the times when acquired, the amounts paid therefor, and any sales or other disposition thereof. The statement shall include a copy of the instrument, if any, whereby such person, committee, or indenture trustee is empowered to act on behalf of creditors or stockholders. A supplemental statement shall be filed promptly, setting forth any material changes in the facts contained in the statement filed pursuant to this subdivision.

(b) Failure To Comply; Effect.

The court on its own initiative or on application or motion of any party in interest (1) may determine whether there has been a failure to comply with the provisions of this rule or with any other applicable law regulating the activities and personnel of any person, committee, or indenture trustee or any other impropriety in connection with any solicitation and, if it so determines, the court may refuse to permit any such person, committee, or indenture trustee to be heard further or to intervene in the case; (2) may examine any representation provision of a deposit agreement, proxy, trust mortgage, trust indenture, or deed of trust, or committee or other authorization, and any claim or stock acquired by any person or committee in contemplation or in the course of a case under the Act and grant appropriate relief pursuant to the Act; and (3) may hold invalid any authority or acceptance given, procured, or received by a person or committee who has not complied with subdivision (a) of this rule or with Rule 10–304.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is a comprehensive regulation of representation in Chapter X cases. It is derived from §§ 209–213 of the Act. See also Bankruptcy Rule 208 and accompanying Note.

Subdivision (a) combines in one place the provisions of §§ 210 and 211 of the Act. Such combination does effect some slight changes. For example, § 210 places the disclosure requirements on an attorney representing creditors or stockholders without regard to the number of such persons he represents. Section 211 places quite similar disclosure requirements on every "person" or committee representing more than 12 creditors or stockholders. Subdivision (a) combines disclosure requirements of the two sections and renders them obligatory if more than one person is represented. See 6 A Collier ¶ 9.29 (1965).

Subdivision (b) is derived from §§ 212, 213 of the Act. See also, Bankruptcy Rule 208(e). As used in clause (2), "other authorization" would include a power or warrant of attorney which are specifically mentioned in § 212 of the Act. This rule deals with representation provisions in mortgages, trust deeds, etc. to protect the beneficiaries from unfair practices and the like. It does not deal with the validation or invalidation of security interests generally. If immediate compliance is not possible the court can permit a representative to be heard on a specific matter but there is no implicit waiver of compliance on a permanent basis.

Rule 10–212. Meeting of Creditors and Stockholders.

(a) Date and Place.

A meeting of creditors and stockholders shall be held not less than 30 nor more than 90 days after the approval of a petition commencing a Chapter X case. The meeting may be held at a regular place for holding court or at any other place within the district more convenient for the parties in interest.

(b) Agenda.

At the meeting of creditors and stockholders, the bankruptcy judge shall (1) preside over the transaction of such business as is proper under Chapter X of the Act, including the examination of the debtor, (2) hear objections to the retention of the trustee or trustees or continuing the debtor in possession, (3) appoint a trustee or trustees if none has previously been appointed and the debtor is not continued in possession and fix a date for the hearing of objections to the retention of such trustee or trustees, and (4) receive the trustee's report, if any.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (a) is derived from but broader than §§ 161, 162 of the Act. It requires the holding of a first meeting at a time somewhat later than similar first meetings are held in other cases under the Act. While the 90-day limit is the maximum and represents a departure from the 60-day period in § 161 of the Act, the court need not set the meeting for the latest date. It can and should call the meeting for the earliest possible time. The time is slightly increased to 90 days maximum because pursuant to Rule 10–901 and Bankruptcy Rule 906(b) this period may not be extended. The agenda of the first meeting includes hearing the trustee's report if any. This is the report ordinarily given as a result of any investigations the trustee may have concluded by this time, or at least a report of what has been done, and the status of the matter since the filing of the petition.

At this meeting it may also be necessary for the court to hold its hearing on the petition itself, if a timely answer was filed after the preliminary approval by someone other than the debtor. That item would come within the scope of such business as is proper under Chapter X. If appropriate, the court under the same heading, could fix a time for the filing of a plan and a date for the hearing on approval of the plan. See also Bankruptcy Rule 501(b).

Rule 10–213. Examination.

(a) Examination on Application.

On application of any party in interest, the court may order the examination of any person. The application shall be in writing unless made during a hearing or examination or unless local rules otherwise provide.

(b) Examination by Trustee, Examiner, or Other Persons.

The trustee or examiner shall, if the court so directs, and any other person may, with the permission of court, examine the directors and officers of the debtor and any other witnesses.

(c) Scope of Examination.

The examination under this rule or Rule 10–212(b) may relate to acts, conduct, property, liabilities, and financial condition of the debtor, the operation of its business and the desirability of the continuance thereof, and any other matter relevant to the case or to the formulation of a plan.

(d) Compelling Attendance for Examination and Production of Documentary Evidence.

The attendance of any person for examination and the production of documentary evidence may be compelled in accordance with the provisions of Bankruptcy Rule 916 by the use of a subpoena for a hearing or trial.

(e) Place of Examination of Debtor.

Without issuing a subpoena, the court may for cause shown and on such terms as it may impose order an officer, a member of the board of directors or trustees or of a similar controlling body, a controlling stockholder or member, or any other person in control of the debtor to be examined under this rule at any place it designates, whether within or without the district wherein the case is pending.

(f) Mileage.

A person other than an officer, a member of the board of directors or trustees or of a similar controlling body, a controlling stockholder or member, or any other person in control of the debtor shall not be required to attend as a witness before a bankruptcy judge unless his lawful mileage and fee for one day's attendance shall be first tendered to him. If an officer, a member of the board of directors or trustees or of a similar controlling body, a controlling stockholder or member, or any other person in control of the debtor resides over 100 miles from the place of examination when he is required to appear for an examination under this rule, he shall be tendered mileage allowed by law to a witness for any distance over 100 miles from his residence at the date of the filing of the first petition commencing a case under the Act or his residence at the time he is required to appear for such examination, whichever is the lesser.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is an adaption of §§ 7, 21a, 167 and 168 of the Act. See also Bankruptcy Rule 205 and accompanying Note.

Subdivision (e) is not a limitation upon subdivision (d). Any person served with a subpoena within the range of the subpoena must attend for examination regardless of his place of residence, pursuant to subdivision (d) of this rule. Subdivision (e) would be applicable to an officer, director, trustee, controlling stockholder or other person in control of the debtor. The designation of those connected with the debtor is adapted from Bankruptcy Rule 906(6) to signify that these persons are essentially within the definition of a corporate debtor. Those within such definition can be made to attend for examination at any place the court designates, without the necessity of issuing a subpoena. Thus, subdivision (e) applies only to the debtor, as defined therein.

Rule 10-214. Apprehension and Removal of Debtor To Compel Attendance for Examination.

Bankruptcy Rule 206 applies in Chapter X cases to an officer, a member of the board of directors or trustees or of a similar controlling body, a controlling stockholder or member, or any other person in control of the debtor.

NOTES OF ADVISORY COMMITTEE ON RULES

The persons subject to this rule are those within the definition of a corporate debtor contained in Bankruptcy Rule 901(6).

Rule 10-215. Compensation for Services and Reimbursement of Expenses.

(a) Application for Compensation and Reimbursement.

A person seeking compensation from the estate for services or reimbursement of necessary expenses shall file with the court an application setting forth a detailed statement of (1) the services rendered and expenses incurred; (2) the amounts requested; and (3) the claims against, or stock of, the debtor, if any, in which a beneficial interest, direct or indirect, has been acquired or transferred by him or for his account, after the filing of a petition commencing a case under the Act. An application for compensation shall include a statement by the applicant as to what payments have theretofore been made or promised to him for services rendered or to be rendered in any capacity whatsoever in connection with the case, the source of the compensation so paid or promised, whether any compensation he has previously received has been shared and whether an agreement or understanding exists between the applicant and any other person for the sharing of compensation received or to be received for services rendered in or in connection with the case, and the particulars of any such sharing of compensation or agreement or understanding therefor, except that the details of any agreement by the applicant for the sharing of his compensation as a member or regular associate of a firm of lawyers or accountants shall not be required. The requirements of this subdivision shall apply to an application for compensation for services rendered by an attorney or accountant even though the application is filed by a creditor or other person.

(b) Disclosure of Compensation Paid or Promised to Attorney for Debtor.

Every attorney for a debtor, whether or not he applies for compensation, shall file with the court on or before the first date set for the meeting held pursuant to Rule 10-212, or at such other time as the court may direct, a statement setting forth the compensation paid or promised him for the services rendered or to be rendered in connection with the case, the source of the compensation so paid or promised, and whether the attorney has shared or agreed to share such compensation with any other person. The statement shall include the particulars of any such sharing or agreement to share by the attorney, but the details of any agreement for the sharing of his compensation with a member or regular associate of his law firm shall not be required

(c) Factors in Allowing Compensation and Reimbursement of Expenses.

(1) *General.* (A) Reasonable compensation for necessary services and reimbursement of necessary expenses incurred in a Chapter X case may be allowed by the court to the trustee, receiver, examiner, and their attorneys, the attorney for the debtor in possession, the attorney for the debtor, and such other persons as may be authorized to assist the trustee, receiver, examiner, or debtor in possession. (B) Reasonable compensation and reimbursement of expenses may be allowed by the court to creditors and

stockholders, committees or representatives of creditors or stockholders, indenture trustees, depositaries, reorganization managers, and any other parties in interest, and the attorneys or agents for any of them, except the Securities and Exchange Commission, for services which are beneficial in the administration of the estate, for services which contribute to a plan which is approved or to the approval of a plan whether or not such plan is confirmed, for services which contribute to a plan which is confirmed or to the confirmation of a plan, and for services rendered in opposing a plan confirmation of which has been refused. (C) Reimbursement of expenses, including reasonable attorney's fees, incurred by the petitioning creditors may be allowed by the court.

(2) *Superseded case.* If the Chapter X petition was filed in a pending bankruptcy case or the Chapter X case was originally commenced under Chapter XI, the court may allow, if not already allowed, reasonable compensation for services rendered and reimbursement of expenses to a marshal, receiver, or trustee as allowed by the Act, to the attorney for petitioning creditors, to the attorney for the bankrupt or debtor, to the attorney for the debtor in possession, and to any other persons and their attorneys entitled to compensation under the Act or Rules in such bankruptcy or Chapter XI case.

(3) *Attorney or accountant.* Compensation may be allowed an attorney or an accountant only for professional services.

(4) *Denial of allowances.* No compensation or reimbursement shall be allowed to any committee or attorney, or other person acting in the case in a representative or fiduciary capacity who, at any time after assuming to act in such capacity has, without the approval of the court, purchased or sold claims against, or stock of, the debtor, or beneficial interests direct or indirect in such claims or stock, or by whom or for whose account such claims, stock, or beneficial interests therein, have been otherwise acquired or transferred.

(5) *Dismissal or conversion to bankruptcy.* On the dismissal or conversion of a case to bankruptcy pursuant to Rule 10-308, the court may allow reasonable compensation for services rendered and reimbursement of expenses incurred in the Chapter X case by any persons entitled thereto under this rule.

(d) Restriction on Sharing of Compensation.

Except as herein provided, a person rendering services in a Chapter X case or in connection with such a case shall not in any form or guise share or agree to share the compensation paid or allowed him from the estate for such services with any other person, nor shall he share or agree to share in the compensation of any other person rendering services in a case under the Act or in connection with such a case. This rule does not prohibit an attorney or accountant from sharing his compensation as a trustee, receiver, attorney, or accountant with a member or regular associate of his firm, or from sharing in the compensation received by his firm or by any other member or regular associate thereof, and does not prohibit an attorney, other than one employed pursuant to Rule 10-206, from sharing his compensation for services rendered with any other attorney contributing thereto. If a person violates this subdivision, the court may deny him compensation, may hold invalid any transaction subject to examination under Rule 10-217 to which he is a party, or may enter such other order as may be appropriate.

NOTES OF ADVISORY COMMITTEE ON RULES

Authority for the allowance and payment of compensation and reimbursement for expenses to the various officers, employees, and parties in interest involved in a Chapter X case or a prior pending bankruptcy case is found in §§ 241-244 of the Act, and § 48g by incorporation into § 244. This rule is derived from all of the statutory provisions dealing with such allowances. It prescribes the procedure for making application for compensation and provides guides for the court in making allowances. This rule is also derived from §§ 247 and 249, the last sentence of 11 U.S.C. § 76a, General Orders 35(3) and 42, and Bankr.R. X-19, E.D. & S.D.N.Y.

The premise for including in these rules provisions governing the allowance of compensation to officers, attorneys, and accountants is that it is peculiarly a judicial responsibility to supervise the administration of estates and in particular to assure that allowances for compensation to those rendering services in connection therewith are fair but not excessive. 3A Collier ¶ 62.05[3] (1961). The costs of bankruptcy administration have been a matter of continuing concern in the history of American bankruptcy law. *Id.* ¶ 62.02. This concern has led to an increasing recognition of the necessity for close judicial control of these costs. The General Orders in Bankruptcy have contained numerous provisions regulating compensation of officers, attorneys, and accountants in bankruptcy cases. Paragraphs (1), (2), and (3) of General Order 35, concerned with compensation of clerks, referees, receivers, and trustees, have been in substantially their present form since 1898. The following General Orders were added in 1925: General Order 40, Receivers and Marshals as Custodians; General Order 42, Compensation of Attorneys; General Order 43, Fees and Expenses of Attorneys for Petitioning Creditors; General Order 44, Appointment of Attorneys and General Order 45, Auctioneers, Accountants and Appraisers. See 3A Collier ¶ 62.02[4] (1961). Most of these orders were amended in 1933, and a general order (former General Order 48) prescribing the compensation of officers in proceedings under former § 74 of the Act was promulgated the same year. The validity of these exercises of the rule-making power was assumed by the courts. See, *e.g., Realty Associates Securities Corp. v. O'Connor*, 55 S.Ct. 663, 665, 295 U.S. 295, 300-01, 79 L.Ed. 1446, 1450, 1451 (1935); *In re H. L. Stratton, Inc.*, 51 F.2d 984, 988 (2d Cir. 1931), cert. den. 52 S.Ct. 199, 284 U.S. 682, 76 L.Ed. 576; see also *Weil v. Neary*, 49 S.Ct. 144, 147, 148, 278 U.S. 160, 168-69, 73 L.Ed. 243, 248, 249 (1929).

This rule assimiliates the practice in respect to applications for an allowance of compensation to accountants to that which has developed under § 62 of the Act in respect to applications for and allowance of compensation to attorneys. This treatment is a corollary of the conformation by Rule 10-206 of the procedure for employing accountants to that prescribed for employing attorneys. All allowances of compensation under this rule are exercises of the court's discretion, but inasmuch as allowances to attorneys and accountants are not subject to the limitations imposed by § 48 of the Act on the compensation of receivers, marshals, and trustees, there is special need for detail in applications for compensation of attorneys and accountants. Such applications should indicate all relevant information having a bearing on the compensation to be allowed. See Report of the Proceedings of the Judicial Conference of the United States, March 30-31, 1967, p. 34. In respect to an attorney's compensation, it has been said that "The principal factors which enter into a determination of what is reasonable are the time spent, the intricacy of the questions involved, the size of the estate, the opposition encountered, the results obtained and the 'economic spirit' of the Bankruptcy Act, to curtail unnecessary expenses." *In re Paramount Merrick, Inc.*, 252 F.2d 482, 485 (2d Cir. 1958).

The disclosure requirements of § 62d of the Act have been extended by subdivision (a) to cover all payments for services in connection with the case, whether or not made pursuant to previous allowances, and the source of such payments. Requiring such disclosures will strengthen the court's hand in dealing with the evils of fee-splitting and in discovering arrangements and relationships which may exert an adverse influence on administration of the estate. Consistently with the recognition in subdivision (d) of the propriety of the sharing of professional compensation by the members of a firm, an applicant for an allowance of compensation is excused from disclosing the details of the partnership agreement or other arrangement for the distribution of compensation among members of a firm of lawyers or accountants. The provisions of the rule regarding the sharing of professional compensation continue the policy of the Act as expressed in the proviso to § 62c but extend it not merely to law partners but to associate members of a law partnership, to associate members and partners of an accounting partnership, and to the professional members of an incorporated firm of attorneys or accountants. The last sentence of subdivision (a) makes it clear that the disclosures required to be made by an attorney or an accountant when he applies for an allowance of compensation are equally necessary when local practice permits a creditor or any other person to apply on behalf of the attorney or accountant for compensation for professional services. See 3A Collier ¶ 62.29[1] (1961).

The reference in subdivision (a) to the filing of a petition commencing a case under the Act relates also to Rule 10–102 providing that for purposes of continuity the Chapter X petition in point of time refers back to any other petition filed under the Act commencing a case during the pendency of which the Chapter X petition was filed.

Subdivision (b) of this rule is new and facilitates examination pursuant to Rule 10–217 of payments and arrangements for payment of its attorney by the debtor. Rule 10–216 authorizes the court to examine transactions whereby the debtor directly or indirectly pays money or transfers property to its attorney for services, and the disclosure required by subdivision (b) covers divisions of compensation and agreements therefor, however received and whatever its source, so long as the compensation is for services rendered in contemplation of or in connection with the case. Such disclosure is a safeguard against roundabout depletions of the estate and impositions on the debtor contrary to the purpose underlying Rule 10–217.

The measure of compensation to receivers, marshals, and trustees is governed by § 241 of the Act and by subdivisions (c) and (d) of this rule. When different persons serve as receiver and trustee or when more than one person serves as successive receivers or successive trustees, the guides embodied in paragraph (1) subdivision (c) govern. The number of officers required to complete the administration of an estate should not be a factor augmenting its costs.

Paragraphs (2) and (3) of *subdivision (c)* of this rule require the court when making allowances to distinguish professional legal and accounting services from other kinds of services, including those required of a trustee, receiver, or marshal. A trustee or receiver may be authorized pursuant to Rule 10–206 to perform professional services for the estate when such an authorization is in the best interest of the estate. Paragraph (2) makes clear the impropriety of any additional allowance for such services, however, unless they were authorized by the court in advance of their performance. Rule 10–206 permits such an authorization only if it is in the best interest of the estate.

Paragraph (3) of subdivision (c) is an extension of the rule of General Order 42, which has been viewed as an implementation of the first sentence of § 72 of the Act. See *In re Mabson Lumber Co.*, 394 F.2d 23, 24 (2d Cir. 1968); 3A Collier ¶ 62.09[2] (1961).

Paragraph (4) of *subdivision (c)* effects a change from § 249 of the Act. That section prohibits compensation to a fiduciary or representative who voluntarily bought or sold claims or stock whether or not prior or subsequent court approval was obtained. The rule would allow such approval whether the transaction was voluntary or involuntary by vesting discretion in the court which would be in a position to consider all the relevant circumstances. The sharing of compensation allowed to an attorney with a forwarding attorney, heretofore permitted under § 62c of the Act, is no longer authorized unless the attorney sharing in the compensation has contributed to the services for which the compensation is allowed. This change in the law harmonizes the practice in respect to the sharing of fees with Canon 34 of the Canons of Professional Ethics and Disciplinary Rule 2–107 of the Code of Professional Responsibility adopted by the American Bar Association. See Drinker, Legal Ethics 186–88 (1953); Smith, Canon 2: "A Lawyer Should Assist the Legal Profession in Fulfilling its Duty to Make Legal Counsel Available," 48 Tex.L.Rev. 285, 297 (1970). The rule prohibits division of compensation paid or agreed to be paid before initiation of the case as well as afterward. As Chief Justice Taft pointed out in *Weil* v. *Neary*, 49 S.Ct. 144, 149, 278 U.S. 160, 173, 73 L.Ed. 243, 250 (1929), arrangements for division of compensation are contrary to public policy not only because of "actual evil results but their tendency to evil in other cases."

"Any division of fees or other compensation represents, above all, an incentive for the applicant to claim a compensation high enough to make his own share in it a worthwhile remuneration. It thereby tends toward extravagance of expenditure. Another evil is that it subjects the officer or attorney entitled to compensation to outside influences, over which the court has no control and which may affect the administration by depriving the court's functionaries of their requisite independence of judgment. Finally, it results in a clear transfer of judicial power over expenditure and allowances from the court to persons who, at best, have a distinctly lesser degree of public responsibilities." 3 Collier 1637 (1961).

The second sentence of *subdivision (d)* resolves a doubt existing under § 62c of the Act as to whether an attorney or accountant may share compensation allowed him as trustee or receiver with a member of a professional firm to which he belongs. See *In re Ira Haupt & Co.*, 361 F.2d 164, 167–68 (2d Cir. 1966), and *In re Street Railways Advertising Co.*, 54 F. Supp. 577, 578 (S.D.N.Y 1940); compare 3 Collier 1639 (1961).

Neither denial of compensation nor invalidation of an arrangement for compensation pursuant to subdivision (d) of this rule is an exclusive sanction for violation of the subdivision. A person may be removed from office or dismissed from his employment for such a violation. 3 Collier 1639 n. 8 (1961).

Rule 10–216. Hearing on Applications for Compensation and Reimbursement.

The court shall fix a time of hearing applications for allowances for services rendered or reimbursement of expenses in the Chapter X case or any other case or proceeding superseded thereby. Notice of such hearing shall be given to the appplicants, the trustee, the debtor, the creditors, stockholders, indenture trustees, the Securities and Exchange Commission, and such other persons as the court may direct as provided in Rule 10–209(b). Such notice need not be given to any class of creditors or stockholders which has no interest in the reorganized debtor under a plan for which the order of confirmation has become final.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is derived from § 247 of the Act. As indicated in that section and this rule, notice of the hearing need not be given to the enumerated parties who have no real interest in the hearing.

Rule 10–217. Examination of Debtor's Transaction With Its Attorney.

(a) Payment or Transfer to Attorney in Contemplation of the Filing of a Petition Under the Act.

On motion by any party in interest or on the court's own initiative, the court may examine any payment of money or any transfer of property by the debtor, made directly or indirectly and in contemplation of the filing of a petition under the Act by or against it, to an attorney for services rendered or to be rendered.

(b) Invalidation of Unreasonable Payment or Transfer.

Any payment or transfer examined under this rule shall be held valid only to the extent of a reasonable amount as determined by the court. The court may enter an order in favor of the estate in the amount of any excess found to have been paid or transferred.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is derived from § 60d of the Act. Information required to be disclosed by the attorney for a debtor under Rule 10–215(b) will assist the court in determining whether to proceed under this rule. Section 60d was enacted in recognition of "the temptation of a failing debtor to deal too liberally with his property in employing counsel to protect him in view of financial reversal and probable failure." *In re Wood and Henderson*, 28 S.Ct. 621, 624, 210 U.S. 246, 253, 52 L.Ed. 1046, 1049 (1908). This rule, like § 60d of the Act, is premised on the need for and appropriateness of judicial scrutiny of arrangements between a debtor and his attorney to protect the debtor against overreaching by an officer of the court who is in a peculiarly advantageous position to impose upon his client. 3 Collier 1141, 1153 (1964); MacLachlan, Bankruptcy 318 (1956). That § 60d is applicable to Chapter X cases, not being inconsistent with any of the provisions in Chapter X of the Act, see 6A Collier 940, n. 8 (1965).

Since recoveries under subdivision (a) of transfers and payments will constitute a part of the estate in a Chapter X case, it provides for initiation of a proceeding to examine on motion of any party's in interest, as well as on the court's own initiative.

While Bankruptcy Rule 220(b) permits examination of any payment, transfer, or agreement made after bankruptcy, that provision is unnecessary in a Chapter X case. On institution of the Chapter X case all the property of the debtor becomes subject to the control of the bankruptcy court. Any such post-petition transfer or agreement would be within the court's supervision and power to avoid.

PART III.—PROCEEDINGS RELATING TO PLAN; DISMISSAL AND CONVERSION TO BANKRUPTCY; CONSUMMATION OF PLAN

Rule 10-301. Formulation and Filing of Plan.

(a) Suggestions for Plan.

Within the time fixed by the trustee pursuant to Rule 10–208(a), the debtor, creditors, and stockholders may submit to the trustee plans or suggestions for the formulation of a plan.

(b) Time for Filing Plan or Report.

The court shall fix a time for the trustee, debtor in possession, or examiner to file a plan or report of the reasons why a plan cannot be formulated.

(c) Filing of Plan.

(1) *When trustee appointed.* Within the time fixed by the court under subdivision (b) of this rule, the trustee shall file a plan or a report of his reasons why a plan cannot be formulated. After the expiration of the time so fixed and before the conclusion of the hearing held pursuant to Rule 10–303, the debtor any creditor, stockholder, or indenture trustee may file a plan.

(2) *When debtor retained in possession.* Within the time fixed by the court under subdivision (b) of this rule, the debtor in possession or the examiner, if one is appointed pursuant to Rule 10–208(b) and he is so directed by the court, shall file a plan or a report of the reasons why a plan cannot be formulated. A plan may also be filed by any creditor, stockholder, or indenture trustee at any time before the conclusion of the hearing held pursuant to Rule 10–303.

(d) Form of Plan.

Every proposed plan and any modification thereof shall be dated and identified with the name of the person or persons submitting or filing it.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivisions (a), (b), and (c) are derived from §§ 167 (6), 169 and 170 of the Act. Normally the proper sequence of events will have the trustee conducting his investigation pursuant to Rule 10–208 and filing a report thereof so that interested parties may be informed of the status of the debtor corporation and any causes of action it may have, then the giving of notice to creditors and stockholders that they may submit plans or suggestions for plans to the trustee within such time as he shall fix, and finally the fixing of a date by the court for the trustee to file his plan. This latter date may be set by the court at an earlier point, but the date fixed should be subsequent to the investigation report and the date set by the trustee for submitting suggestions to him.

Under *subdivision c(1)*, parties other than the trustee may also file a plan. While the trustee is to file a plan or report of reasons why he cannot do so within a time fixed by the court, other parties may file a plan at any time after that time and before the conclusion of the hearing on approval of a plan held pursuant to Rule 10–303. This provision does not represent a departure from §§ 169 and 170 of the Act which do not permit parties other than the trustee to file plans. But filing plans and submitting suggestions to the trustee for formulating a plan should not be confused. Parties may, in advance, submit suggestions. They may not, until the trustee's time has expired, file a plan. Thus, there is a further safeguard against some person taking control of the reorganization process. The trustee has the opportunity to screen suggestions for a plan to further protect public investors.

Subdivision (d) requires each plan and modification to be identified for easy reference.

This rule does not affect the filing of modifications to a plan under Rule 10–306. That rule governs the procedure for such modifications whether filed before approval, or before or after confirmation.

Rule 10-302. Classification of Claim; Valuation of Security.

(a) Classification of Claims.

For the purposes of the plan and its acceptance, the court may fix, after hearing on such notice as it may direct, the division of creditors and stockholders into classes according to the nature of their respective claims and stock.

(b) Valuation of Security.

For the purposes of classification under subdivision (a) of this rule, of claims which may be secured in whole or in part, the court shall, if necessary, on application of any party in interest, hold a hearing on such notice as the court may direct, to determine the value of the security interest and allow the claim as unsecured to the extent it is enforceable for any excess of the claim over such value.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (a) is derived from § 197 of the Act, requiring the court, on notice, to classify claims and interests. *Subdivision (b)* is also derived from § 197 to take account of the fact that secured as well as unsecured claims are proved and allowed in Chapter X cases. The court may use any of the methods for determining the value of security specified in § 57h or any method, including appraisal, which it deems appropriate. Both subdivisions apply not only to distribution but are for purposes of the plan and its acceptance as well. See Rule 10–305(c) pursuant to which a partially secured creditor can vote on a plan in his capacity as a secured creditor and in his capacity as an unsecured creditor. *Subdivision* (a) does not require in all cases that the court classify claims after hearing. There may be only one class, or the plan may be acceptable is proposed by the trustee and no separate hearing should be necessary; in some cases the matter may be determined at the hearing on approval. In other cases, the hearing on classification could be held before the trustee formulates his plan if the court's instructions on proper classification are needed to enable the formulation of the plan.

Rule 10–303. Approval of Plan by Court.

(a) Hearing on Plan and Objections Thereto.

After the filing of a plan or plans or a report of reasons why a plan cannot be formulated, as provided in Rule 10–301, the court shall hold a hearing on at least 20 days' notice to the debtor, creditors, stockholders and other parties in interest as provided in Rule 10–209, to consider such report or such plans, and any objections or modifications thereto, or substitute plans. When the court orders that a plan be submitted to the Securities and Exchange Commission for advisory report pursuant to subdivision (b) of this rule, it shall adjourn the hearing to a date subsequent to the time fixed for the filing of such report.

(b) Submission of Plan to Securities and Exchange Commission.

If the indebtedness of the debtor is $3,000,000 or more, the court shall submit such plans as it deems worthy of consideration to the Securities and Exchange Commission for examination and advisory report and summary of such report. If the indebtedness is less than $3,000,000, the court may so submit any such plans. On submission of any plan to the Securities and Exchange Commission, the court shall fix a reasonable time within which the report of the Commission, if any, and summary thereof is to be filed with the court.

(c) Approval of Plan.

The court shall rule on approval of the plan or plans at the hearing provided for under subdivision (a) of this rule or thereafter, unless there was a submission to the Securities and Exchange Commission pursuant to subdivision (b) of this rule. If there was such a submission, the court shall resume the hearing and rule on approval after the filing of the Commission's report, or notification to the court by the Commission that no report will be filed, or expiration of the time fixed for the filing of such report, whichever first occurs. If additional evidence is received, the court may resubmit the plan or plans to the Securities and Exchange Commission for supplemental report.

(d) Dates Fixed for Acceptance and Confirmation.

On approval of the plan or plans, the court shall fix a time within which creditors and stockholders may accept or reject such plan or plans and may fix a date for the hearing on confirmation.

(e) Transmission and Notice to Creditors and Stockholders.

On approval of a plan or plans, the trustee, debtor in possession, or examiner shall mail to all creditors and stockholders (1) the plan or plans and a summary thereof approved by the court unless the court directs that only such summary be mailed; (2) a summary of the opinion of the court, if any, approving the plan or plans which summary shall be approved by the court; (3) the summary of the report, prepared by the Securities and Exchange Commission, if any; (4) notice of the date fixed, if any, for the hearing on confirmation; and (5) such other information as the court may direct. In addition, notice of the time within which acceptances and rejections of such plan or plans may be filed, and a form of ballot conforming substantially to Official Form No. 10–7 shall be mailed to creditors and stockholders entitled to vote on the plan or plans. The court may direct that the opinion of the court or report of the Securities and Exchange Commission be transmitted in place of, or in addition to, the summary thereof specified in clause (2) or (3) of this subdivision. In the event only summaries are transmitted, the plan, opinion of the court and report of the Securities and Exchange Commission shall be provided on request without charge. For the purposes of this subdivision, creditors and stockholders shall include holders of stock, bonds, debentures, notes, and other securities of record at the date the order approving the plan or plans is entered.

(f) Limitation on Solicitation Before Approval.

No person shall solicit any acceptance of a plan or plans except as provided in Rule 10–304.

(g) Public Utility Corporations.

(1) If a debtor is a public utility corporation subject to the jurisdiction of a commission having regulatory jurisdiction over the debtor, a plan shall not be approved under subdivision (c) of this rule, until (A) it shall have been submitted to each such commission; (B) an opportunity shall have been afforded each such commission to suggest amendments or offer objections to the plan; and (C) the court shall have considered such amendments or objections at a hearing at which such commission may be heard.

(2) If a debtor is a public utility corporation, wholly intrastate, subject to the jurisdiction of a State commission having regulatory jurisdiction over such debtor, a plan shall not be approved, under subdivision (c) of this rule, unless such State commission shall have first certified its approval of such plan as to the public interest therein and the fairness thereof. On its failure to certify its approval or disapproval within 30 days, or such further time as the court may prescribe, after the submission of the plan to it, as provided in this subdivision, the public interest shall, for the purposes of such approval and of the confirmation of the plan, not be deemed to be affected by the plan.

(h) Objections After Approval.

The order of the court approving a plan or plans pursuant to subdivision (c) of this rule shall not affect the right of any party in interest, including the

Securities and Exchange Commission, to object to confirmation.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule draws together the provisions in several sections of the Act pertaining to the court's approval of plans before submission for acceptances. *Subdivision (a)* is derived from §§ 169–171 of the Act which requires a hearing to be held on any plans submitted pursuant to Rule 10–301 which includes objections or amendments proposed to such plans and objections to the trustee's report, if any, that a plan cannot be effected.

Section 172 requires the court to submit proposed plans to the Securities and Exchange Commission, prior to approval, if the scheduled indebtedness is $3,000,000 or more and gives the court discretionary power to so submit a plan if the indebtedness is less than $3,000,000 and provides that such report is advisory only. *Subdivision (b)* retains these provisions. Under subdivision *(a)*, however, the court is to adjourn the hearing and resume it after such report is filed so that the SEC's recommendations, if any, can be considered at the hearing.

Subdivision (c) incorporates the provisions of §§ 173 and 174 of the Act to the effect that an order of approval may not be entered until the SEC has filed its report, has notified the court that it will not file a report, or has not filed a report within the time fixed by the court under *subdivision (b)(2)* of his rule, whichever first occurs if such report is required or requested. For approval the court must find that the proposed plan or plans contain the provisions required by law, i.e., § 216 of the Act, and that they are fair, equitable, and feasible.

Under the subdivision, the court is to rule on approval at the hearing or thereafter. Thus, it is not necessary for the court to keep the hearing open until it actually rules. It may reserve decision, close the hearing, and so rule at a later time. At the hearing, however, substantial new evidence may be introduced and this would be a proper case for a rereference to the SEC for a supplemental report pursuant to the last sentence of the subdivision.

Upon approval, *subdivision (d)* then requires the court to fix the time within which the plan or plans may be accepted. Additionally, the court may fix a time of the hearing on confirmation at the time of approval of the plan, or it may do so in a subsequent order.

For affected creditors and stockholders to make an informed judgment concerning their acceptance of a plan, *subdivision (e)* provides for the transmission to them of various documents. The plan and summary thereof approved by the court, the summary approved by the court of the court's opinion, if any, the summary of the SEC report prepared by it, if any, a ballot and notice of the time fixed for filing acceptances are listed as that which they are entitled to receive. The court may direct, however, that the full opinion, or report be mailed either with the summary or in place of such summary. It may also direct that only a summary of the plan be transmitted. Under clause (5) the court could include its findings and order of approval in appropriate cases. This subdivision is derived from § 175 of the Act.

Under the last sentence of subdivision (e) the notice and transmission of documents is to be to stockholders and bondholders of record at the date the order approving the plan is entered. After the filing of the petition and prior to the approval of a plan a considerable length of time may elapse during which stock and bonds of the debtor may be traded. Thus, the original lists filed pursuant to Rule 10–108 may well be outdated. It is more meaningful to permit present owners to participate in the case. For this purpose the records of a stock transfer agent, registrar, indenture trustee and the like may be utilized. If none of the foregoing exist, resort can be had to the books and records of the debtor.

Subdivision (g) applies only in cases where the debtor is a public utility corporation and is derived from §§ 177 and 178 of the Act.

Subdivision (h) is drawn from § 180 of the Act and is to permit objection to confirmation after approval.

Rule 10–304. Solicitation of Acceptances.

No person shall, without the consent of the court, solicit any acceptance or rejection, conditional or unconditional, of any plan, whether by proxy, deposit, power of attorney or otherwise, until after the entry of an order approving such plan pursuant to Rule 10–303(c) and the transmittal thereof to creditors and stockholders pursuant to Rule 10–303(e). Rule 10–211(b) applies to any violation of this rule.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is derived from § 176 of the Act, without change of substance. The effect of improper solicitation contained in § 176 is placed in subdivision (b) of Rule 10–211.

Rule 10–305. Acceptance or Rejection of Plans.

(a) Persons Entitled To Accept or Reject Plan; Time for Acceptance or Rejection.

Any creditor whose claim is deemed allowed pursuant to Rule 10–401(e) or has been allowed by the court and any creditor who is a security holder of record at the date the order approving a plan or plans is entered whose claim has not been disallowed and any stockholder of record at the date the order approving a plan or plans is entered whose stock interest has been disallowed may accept or reject a plan or plans within the time fixed by the court pursuant to Rule 10–303(d). For cause shown and within such time, the court may permit a creditor or stockholder to change or withdrw his acceptance or rejection. Notwithstanding objection to a claim or stock interest, the court may temporarily allow it to such extent as to the court seems proper for the purpose of accepting or rejecting a plan.

(b) Form of Acceptance or Rejection.

An acceptance or rejection may be on Official Form No. 10–7, shall be in writing, shall identify the plan or plans accepted or rejected, and shall be signed by the creditor or stockholder or his authorized agent. If more than one plan is transmitted pursuant to Rule 10–303(e), an acceptance or rejection may be filed by each creditor or stockholder for any number of such plans and if acceptances are filed for more than one plan, the creditor or stockholder may indicate his preferences among the plans so accepted.

(c) Acceptance or Rejection by Partially Secured Creditors.

A creditor whose claim has been allowed in part as a secured claim and in part as an unsecured claim shall be entitled to accept or reject a plan or plans in both capacities.

(d) Disqualification of Acceptance or Rejection.

For the purpose of determining the requisite number of acceptances, the court after hearing on notice to the creditor or stockholder may disqualify any acceptance or rejection of a plan or modification of a plan if such acceptance or rejection was not in good faith in the light of or irrespective of the time of the acquisition of the claim or stock by such creditor or stockholder.

(e) Computing Requisite Majorities.

The requisite majorities necessary for the acceptance of a plan shall be computed on the basis of the claims and stock interests of creditors and stockholders affected by the plan who file an acceptance or rejection of the plan within the time prescribed, which in no event shall be less than the requisite majorities of the filed and allowed claims and stock interests. The filing of an acceptance or rejection of a plan by a creditor or stockholder shall be deemed to constitute the filing of a proof of claim or proof of stock interest for the purpose of computing the majorities required by the Act.

NOTES OF ADVISORY COMMITTEE ON RULES

Section 179 of the Act requires a plan to be accepted in writing filed with the court by the requisite number of creditors, and if the debtor is solvent, by the stockholders, the time for filing the acceptances is set forth in Rule 10-303 as a date fixed by the court when it approves the plan or plans.

Pursuant to Rule 10-401, the list of creditors and stockholders may serve to evidence claims and interests. Thus filing a claim, except when required by that rule is not a prerequisite to acceptance of a plan. Additionally, since stockholders and bondholders of record at the date the order approving the plan is entered receive notice of the time to file acceptances under Rule 10-303, they are entitled to accept a plan without filing a proof of claim or interest.

Subdivision (a) does not confer a right to have acceptances counted of unaffected creditors or stockholders. Pursuant to § 179 of the Act, creditors or stockholders who are not affected by the plan or whose claims or stock are disqualified under § 203 or subdivision (d) of this rule are not parties whose acceptances are required to satisfy the number of acceptances necessary under § 179. Additionally, under the same section, if the debtor is found to be insolvent, acceptance by stockholders is not necessary. Nor, is an indenture trustee considered as a creditor for purposes of voting. Creditors and stockholders who are entitled to vote are those whose claims or interests are deemed allowed by Rule 10-401(e), or actually allowed by the court. If an objection is filed to a claim or interest, that claim or interest is in neither category until the objection is disposed of. The court may, however, allow it temporarily for voting purposes.

Public investors in particular are afforded a greater degree of protection by being permitted to vote on a plan in the absence of filing a claim or proof of stock interest. Thus, their neglect or forgetfulness resulting in a failure to file would have no material effect. The categories listed in subdivision (a) are not mutually exclusive for this rule or Rule 10-405 on distribution. The trustee would have to deal with duplicate or overlapping claims by the objection process.

Subdivision (b): The acceptance or rejection should properly identify the plan accepted by its date and the party proposing it in the same fashion in which the plan is identified pursuant to Rule 10-301(d). Where more than one plan is submitted to creditors and stockholders for acceptance, they are permitted to file acceptances for any number of such plans. It is helpful, however, in that event, to assist the court in evaluating such acceptances, and subdivision (b) of this rule permits such creditors and stockholders to indicate their preferred choices among the plans which they are accepting. This can be done by stating which is their first choice, second choice, etc.

Subdivision (c) of this rule should be read in connection with Rule 10-302(b) which permits the court to value a secured claim. If part thereof is held unsecured, subdivision (c) of this rule allows the creditor to accept or reject as a secured creditor and as an unsecured creditor to the extent of his interest in each capacity.

Subdivision (d) is derived from § 203 of the Act. If the matter in this subdivision had not been raised previously and is raised at the hearing on confirmation pursuant to § 221(3), the court should at that point set a hearing on notice to the creditor or stockholder for determination of the issue. This subdivision only contemplates a hearing on the disqualification of acceptance or rejection if such issue is raised. It does not contemplate any special hearing on acceptances generally to determine whether the requisite acceptances have been obtained. That would be done as part of the hearing on confirmation.

Subdivision (e) is adapted from § 179 of the Act. Under that section the requisite majorities for determining whether or not a plan is accepted are based on the total number of claims and stock interests filed and allowed; thus, failure to accept a plan by a creditor or stockholder who filed a proof of claim or interest is tantamount to a rejection. The rule does not displace the statutory provision but it places emphasis on the need to cast a ballot. Subdivision (e) provides an increased democratization of this procedure by providing that the votes cast are the ones counted in computing such majorities. Accordingly, a creditor or stockholder who wishes to participate in the determinative process must file either an acceptance or rejection of the plan. The failure by one who has filed a proof of claim or stock interest to return a ballot may still count as a rejection by virtue of the fact that in the actual computation of votes there must be acceptance by the majorities required under § 179 of the Act, that is, the majorities of those claims and interests filed and allowed. Since Rule 10-401 dispenses with the need to file claims, the final sentence of subdivision (e) deems the filing of an acceptance or rejection to constitute the filing of a claim. See Official Form No. 10-7 (Ballot). To comply with § 179 of the Act, a proof of claim filed by a creditor or a proof of stock interest filed by a stockholder will be counted in computing the total amount of claims filed and stock interests filed, regardless of whether an acceptance or rejection of the plan was filed by the holder of the claim or stock interest. If a creditor or stockholder files a claim or stock interest prior to voting, the acceptance or rejection would not constitute or supersede such filing.

Under the rule, an option rests with the creditor or stockholder to cast a negative vote by filing a rejection. The ballot which is required to be sent under Rule 10-303(e) informs the recipients of the need to vote. Return of the ballot is equivalent to filing a claim. Under the Act, failure to file a claim or proof of interest within the time specified results in loss of the right to vote on the plan; thus, the rule is more protective of the voting rights. It should also be noted that the rules do not in any way change the statutory requirements that the plan be fair and equitable and that it be approved by the court prior to submission for voting.

For the purpose of subdivision (e), not more than one acceptance or rejection based on the same claim or interest may be counted.

Rule 10-306. Modification of Plan Before or After Approval.

(a) Modification Prior to Approval of Plan.

At any time prior to the approval of a plan, a party filing a plan pursuant to Rule 10-301 may file a modification thereof. At the hearing on approval or within such further time as the court may allow, any party in interest may file a modification of a plan or a substitute plan therefor.

(b) Modification After Approval of Plan Either Before or After Confirmation.

After a plan has been approved, a party in interest may propose a modification of the plan only with leave of court for cause shown and subject to the provisions of subdivision (c)(1) of this rule. No acceptance of such a modification may be solicited before its approval without the consent of the court. If the court finds that the proposed modification does not materially and adversely affect the interest of any creditor or stockholder who has not in writing accepted it, the court may approve the modification and it shall be deemed accepted by all creditors and stockholders who have previously accepted the plan. If the court finds that the proposed modification does so affect the interest of any creditor or stockholder who has not in writing accepted it, the court shall (1) fix a date for a hearing to consider the approval of such modification, (2) enter an order that any creditor or stockholder who accepted the plan and who fails to file with the court, within such reasonable time as shall be fixed in the order, a written rejection of the modification, shall be deemed to have accepted the plan as modified, (3) order the mailing of notice of such order and the date fixed for the hearing on approval of the modification, accompanied by a copy or summary of the proposed modification, to creditors, stockholders, and other parties in interest at least 20 days before the date fixed for filing rejections of the modification, and (4) transmit, at least 20 days before the date fixed for such hearing, a copy of the proposed modification to the Securities and Exchange Commission with notice that the Commission may file a supplementary advisory report at or before the hearing on approval of the modification. The requirements of Rule 10-307 with respect to confirmation of a plan shall apply to such proposed modification except that the court may rule on confirmation at the hearing on approval and the notice transmitted under this subdivision shall so indicate.

(c) Modification of Plan After Consummation.

(1) After a plan has been substantially consummated, whether or not an order has been entered under this subdivision to that effect, the plan may not be modified if the proposed modification materially and adversely affects the participation provided for any class of creditors or stockholders by the plan.

(2) A plan shall be deemed to have been substantially consummated if, insofar as applicable, each of the following events has occurred: (A) transfer, sale or other disposition of all or substantially all of the property dealt with by the plan pursuant to its provisions; (B) assumption of operation of the business and management of all or substantially all of the property dealt with by the plan by the debtor or by the corporation used for the purpose of carrying out the plan; and (C) commencement of distribution to creditors and stockholders as provided in Rule 10-405(a).

(3) On notice to the trustee, debtor, Securities and Exchange Commission, and such other persons as the court may direct, the trustee, debtor in possession, the corporation to which the assets of the debtor have been or are to be transferred under the plan, or any other party in interest may file an application with the court for an order declaring the plan to have been consummated or substantially consummated pursuant to this subdivision.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is derived from §§ 222 and 223 of the Act. Modifications may be proposed at any time until a confirmed plan has been consummated or substantially consummated pursuant to subdivision (c) of this rule.

A modification may be made, with the approval of the court, without submission to creditors and stockholders, if their interests are not affected by the modification. If, on the other hand, interests of nonassenting creditors and stockholders are affected, the procedures for approval in this rule and confirmation in Rule 10-307 are applicable to the proposed modification. These procedures regulate hearing on notice, submission to the Securities and Exchange Commission for an advisory report, if necessary, transmission to creditors and stockholders, requisite number of acceptances and the like. One difference between accepting a plan and accepting a proposed modification does exist. With regard to the plan, actual acceptances timely filed are counted to make up the requisite number. A failure to reject does not constitute an acceptance. But with regard to a proposed modification, a failure to file a written rejection within the time fixed is deemed an acceptance of the plan as modified for those who accepted the original plan. The original acceptance may not provide otherwise so as to avoid this result.

The supplementary advisory report of the SEC which may be filed under this rule may in fact be an original report where the SEC did not previously file a report on the plan being modified.

The standard for determining whether a proposed modification affects the interest of a creditor or stockholder who has not in writing accepted it is prescribed by § 107 of the Act. While the court may, without notice and hearing determine pursuant to the fifth sentence of the rule that the modification does not affect the interest of any creditor or stockholder who has not in writing accepted it, that issue may be litigated at the hearing on confirmination of the plan as modified under Rule 10-307. Official Form No. 10-8 provides a form of order fixing a time for rejecting the proposed modification, combined with a notice thereof.

The stockholders and bondholders who should receive a copy of the modification and notice of the time for filing rejections are those who received notice of the approval of the plan itself and the time fixed for filing acceptances thereof pursuant to Rule 10-303.

Under *subdivision* (b) acceptances of a modification may be solicited only with prior court approval. In the event such approval is obtained, it would be possible to confirm the modification at the hearing on approval pursuant to the last sentence of the subdivision.

Subdivision (c) is derived from §§ 228 and 229 of the Act. The effect of consummation or substantial consummation is directly related to the matter of modification of plans as indicated by paragraph (1) of this subdivision. Paragraphs (2) and (3) relate to the concept of substantial consummation and procedure for determining whether or not there has been such.

Rule 10-307. Confirmation of Plan.

(a) Objections to and Hearing on Confirmation.

(1) *Objections.* Objections to confirmation shall be filed at least 10 days before the hearing held under this subdivision, unless the court extends such time. A copy of any objection shall be mailed or delivered promptly to the trustee or debtor in possession, and to such other persons as may be designated by the court. An objection to confirmation is governed by Bankruptcy Rule 914.

(2) *Hearing.* The court shall hold a hearing to rule on confirmation of a plan on at least 20 days' notice to the debtor, creditors, and stockholders, and other parties in interest as provided in Rule 10-209, whether or not any objections are timely filed. If more than one plan has received the requisite number of acceptances, the court shall consider the preferences indicated by the creditors and stockholders pursuant to Rule 10-305(b) in determining which plan to confirm.

(b) Order of Confirmation.

The order of confirmation shall conform substantially to Official Form No. 10-9 and notice of entry of the order of confirmation shall be mailed promptly to all parties in interest as provided in Rule 10-209.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is derived from § 179 of the Act. Official Form No. 10-9 provides an appropriate form of confirmation order. Included among the issues at the hearing on confirmation under this rule would be any controversy over whether a creditor or stockholder or any class thereof who has rejected a plan or modification of a plan, was affected thereby, as is now contemplated by § 107 of the Act, whether any acceptance or rejection of a plan or modification was not in good faith, as is provided in subdivision (d) of Rule 10–305 (derived from § 203 and § 221(3) of the Act), and whether any class of affected creditors or stockholders not accepting the plan by the requisite majority is adequately protected as provided in § 216(7), (8) of the Act.

To confirm the plan the court must be satisfied that there is compliance with § 221 of the Act. These matters include a finding that the plan is fair and equitable, and feasible; that the provisions of article VII, § 199, and article X of the Act have been complied with, that the proposal of the plan and its acceptance are in good faith and have not been made or procured by means or promises forbidden by the Act; that payments or promises made by the debtor or other corporation in or in connection with the case have been disclosed and are reasonable or will be subject to the approval of the court; and that the identity, qualifications and affiliations of those who will be directors or officers or voting trustees have been disclosed and such appointments are equitable.

The scheme of these rules would effect a change in § 179 of the Act which requires a determination of requisite acceptances before the court sets a date for the hearing on confirmation. Pursuant to this rule and Rule 10–303, however, that date can be fixed before acceptances are determined. At the time of approval of a plan the date for the confirmation hearing can be fixed. These rules also do not contemplate a hearing to determine acceptances. That can be done at the hearing on confirmation.

The notice requirements for the hearing on confirmation are contained in Rule 10–209 which includes notice to the Securities and Exchange Commission, district director of internal revenue, and when appropriate, to the Secretary of the Treasury.

In determining which of several plans to confirm, if more than one has received the requisite number of acceptances, the court should consider the preferences stated by the accepting parties. In this, the court will have to exercise some discretion, taking into consideration all of the relevant circumstances, particularly where the different classes of parties and parties within the same class may express different preferences and there is no overwhelming percentage in favor of one of such plans.

Subdivision (*b*) requires notice to parties in interest of entry of the order of confirmation. Although this notice is required to be mailed promptly, the time to appeal from such order commences from the time of entry of the order regardless of when notice is actually received.

Rule 10–308. Dismissal or Conversion to Bankruptcy or Chapter XI After Approval of the Petition.

(a) Dismissal or Conversion to Bankruptcy or Chapter XI.

The court shall enter an order, after hearing on notice as provided in Rule 10–209(b), dismissing the case, or adjudicating the debtor a bankrupt if it has not been previously so adjudged, or directing that the bankruptcy case proceed, or, with the consent of the debtor, directing that the case proceed under Chapter XI of the Act, whichever may be in the best interest of the estate and appropriate under the Act—

(1) if no plan is proposed within the time fixed or extended by the court; or

(2) if no proposed plan is approved by the court and no further time is granted for the proposal of a plan; or

(3) if no approved plan is accepted within the time fixed or extended by the court; or

(4) if confirmation is refused and no further time is granted for the proposal of other plans; or

(5) if a confirmed plan is not consummated.

(b) Notice of Dismissal to Creditors.

Promptly after entry of an order of dismissal under this rule, notice thereof shall be given to creditors and stockholders in the manner provided in Rule 10–209(c).

(c) Revesting of Title.

A certified copy of the order of dismissal under this rule shall constitute conclusive evidence of the revesting of the debtor's title to its property.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is derived from §§ 236 and 237 of the Act, providing for dismissals and conversions to bankruptcy before or after confirmation of a plan. Failure to consummate a plan or effect its substantial consummation may encompass the happening of a variety of circumstances as indicated in Rule 10–306 which is derived from § 229 of the Act. This rule does not apply to an answer to a petition seeking dismissal on the merits.

Under *subdivision* (*a*), any party in interest has standing to file an application.

The relief awarded should be that appropriate under the Act. Thus, if the case had been commenced by an involuntary petition alleging something other than an act of bankruptcy the appropriate relief would be dismissal rather than an adjudication absent other factors.

There is no time limit in the Act or these rules during which a plan must be consummated. Each case must be considered in its own circumstances. Both contemplate that an end should be put to the proceedings when, in the opinion of the court, there appears little likelihood that the plan can be consummated.

The requirement that notice of an order entered under subdivision (a) of this rule be given to the Securities and Exchange Commission is derived from § 265a of the Act, but a similar requirement in § 266 regarding such notice to the Secretary of the Treasury is not continued.

A Chapter X case may also be dismissed pursuant to Rule 10–113. That dismissal, however, results from a dismissal of the petition because of its inadequacy or because it may not have been filed in good faith, *i.e.*, one of the statutory requirements for approving a Chapter X petition may be lacking.

Subdivision (*b*) requires notice of dismissal of a case under this rule to be mailed as provided in Rule 10–209(c). It should be mailed promptly. The time of receipt of this notice, however, has no bearing on the time to file notice of appeal from the order itself. This appeal time is governed by the date of entry of the order itself.

Subdivision (*c*) prescribes the evidentiary effect of a certified copy of the order of dismissal.

Rule 10–309. Consummation; Final Decree.

(a) Orders in Aid of Consummation.

The court may make such orders as may be necessary or useful in aid of consummation of a plan including fixing the time and manner for the deposit and distribution of the cash or other consideration under the plan, directing the debtor, trustee, mortgagees, indenture trustees, and other necessary parties to execute and deliver such instruments as may be necessary to effect a retention or transfer of property dealt with by the confirmed plan, and to perform other acts, including the satisfaction of liens.

(b) Final Decree.

On consummation of the plan, the court shall enter a final decree which shall contain provisions (1) stating the effect of confirmation and consummation on the creditors and stockholders of the debtor; (2) discharging the trustee, if any; (3) making such provisions by way of injunction or otherwise as may be equitable; and (4) closing the estate.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (a) is derived from § 227 of the Act.

Subdivision (b) is derived from § 228 of the Act. Under § 228, the final decree entered on consummation of the plan provides, among other matters, for the discharge of the debtor. These would remain statutory provisions unaffected by the rules. Thus the effect of consummation is as expressed by § 228(1).

PART IV.—CLAIMS AND DISTRIBUTION TO CREDITORS AND STOCKHOLDERS

Rule 10-401. Proof of Claim or Interest.

(a) List of Creditors and Stockholders.

The list of creditors and stockholders prepared and filed with the court pursuant to Rule 10-108 shall constitute prima facie evidence of the validity and amount of claims of creditors which are not listed as disputed, contingent, or unliquidated as to amount, and of stock interests and, except as provided in subdivision (b)(3) of this rule with respect to claims, it shall not be necessary for the holder of such claim or stock interest to file a proof of claim or interest.

(b) Filing Proof of Claim.

(1) *Time for filing.* A proof of claim may be filed at any time prior to the approval of a plan except that the court may fix a different bar date for the filing of claims on notice as provided in Rule 10-209.

(2) *Who may file.* Any creditor or indenture trustee may file a proof of claim within the time prescribed by subdivision (b)(1) of this rule.

(3) *Who must file.* (A) Any creditor, including the United States, a state, or any subdivision thereof, whose claim is listed as disputed, contingent, or unliquidated as to amount, shall file a proof of claim within the time prescribed by subdivision (b)(1) of this rule; any such creditor who fails to do so shall not, with respect to such claim, be treated as a creditor for the purposes of voting and distribution.

(B) Notwithstanding the foregoing, the court may, at any time, require the filing of a proof of claim within such time as it may fix. Any person required under this paragraph to file a proof of claim who fails to do so shall not, with respect to such claim, be treated as a creditor for the purposes of voting and distribution.

(4) *Evidentiary effect.* A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of such claim. Such a proof of claim shall supersede any listing of that claim made pursuant to Rule 10-108.

(5) *Form and place of filing.* A proof of claim shall consist of a statement in writing setting forth a creditor's claim and, except as provided in Rule 10-402, shall be executed by the creditor or by his authorized agent. Subdivisions (b) and (c) of Bankruptcy Rule 302 apply in Chapter X cases except that subdivision (c) shall not apply to claims founded on bonds or debentures.

(6) *Filing by indenture trustee.* An indenture trustee may file claims for all holders, known or unknown, of securities issued pursuant to the instrument under which he is trustee.

(c) Transfer of Claim.

If a claim other than one founded on a bond or debenture has been assigned, a statement setting forth the terms of the assignment shall be filed with the court and a copy thereof delivered to the trustee or the debtor in possession.

(d) Duty To Examine and Object to Claims.

The trustee or debtor in possession shall examine listed claims and proofs of claims and, unless no purpose would be served thereby, object to the allowance of improper claims.

(e) Allowance When No Objection Made.

Subject to the provisions of subdivision (b)(3) of this rule and Rule 10-302(b), a claim filed or listed in accordance with this rule, or Rule 10-402 or listed in accordance with Rule 10-108, shall be deemed allowed unless objection is made by a party in interest.

(f) Objection to Allowance.

An objection to the allowance of a claim shall be in writing. A copy of the objection and notice of a hearing thereon shall be mailed or delivered to the claimant, the debtor and the trustee, or debtor in possession. If an objection is joined with a demand for relief of the kind specified in Rule 10-701, the proceeding thereby becomes an adversary proceeding.

(g) Reconsideration of Claims.

Bankruptcy Rule 307 applies in Chapter X cases.

(h) Proof of Right To Record Status.

For the purposes of Rules 10-305 and 10-405 and for the purpose of receiving notices, a person who is not the record holder of a security may show that he is nevertheless entitled to be treated as such holder of record by filing with the court proof thereof. An objection to such proof may be filed by any party in interest.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule permits use of the lists filed under Rule 10-108 to determine the claims of creditors and stockholder interests in place of a formal proof of claim.

Subdivision (a): It is contemplated that subdivision (a) of this rule will eliminate the need for filing proofs which, for the most part, have little utility. The inconvenience and expense to numerous and widespread creditors and stockholders will be obviated as will the burdens of collecting and registering such claims on the part of the trustee or debtor in possession. Security holders who are properly listed need not file proof or notice of their claims or interests.

Subdivision (b): Pursuant to subdivision (b), only creditors whose claims are disputed, contingent, or unliquidated, and creditors as to whom the trustee or debtor in possession determines it advisable to have proofs of claim, need file such proof. In any event, any creditor or stockholder may file a proof of claim or interest. When a proof is filed, there should be compliance with the provisions of this rule as to form, manner, and time. The court may but need not fix a bar date for the filing of proofs with respect to any or all creditors and stockholders. If a claim is required to be filed, failure to do so within the time fixed precludes that creditor from voting on a plan and participating in any distribution. The provisions of § 57d of the Act remain applicable and paragraph (4) does not contemplate any change with respect thereto.

If the court has fixed a bar date for the filing of proofs of claim, it may still enlarge that time within the provisions of Bankruptcy Rule 906(b) which is made applicable in this subdivision. This policy is in accord with Chapter X generally which is to preserve rather than to forfeit rights. In § 102 it rejects the notion expressed in § 57n of the Act that claims must be filed within a six-month period to participate in any distribution. Section 224(4) of Chapter X of the Act permits distribution to certain creditors even if they fail to file claims and § 204 fixes a minimum period of 5 years before distribution rights under a plan may be forfeited. This approach was intentional as expressed in Senate Report 1916 (75th Cong., 3d Sess., April 20, 1938):

> "Sections 204 and 205 insure participation in the benefits of the reorganization to those who, through inadvertence or otherwise, have failed to file their claims or otherwise evidence their interests during the pendency of the proceedings."

This attitude is carried forward in the rules, first by dispensing with the need to file proofs of claims and stock interests in most instances and, secondly, by permitting enlargement of the fixed bar date in a particular case with leave of court and for cause shown in accordance with the equities of the situation.

Paragraph (6) is derived from § 198 of the Act. Although an indenture trustee may file claims on behalf of debenture holders, these rules do not constitute the indenture trustee a creditor for voting purposes.

It should be noted that stockholders need not file proofs of stock interests. Their voting and distribution participation is dependent on their ownership as disclosed by the appropriate records of a transfer agent or the corporate records at the time of approval and confirmation of a plan respectively, as provided in Rules 10-305 and 10-405. Any dispute as to ownership would arise and be detremined in ordinary fashion where normally the interested parties would bring it before the reorganization court.

Notice of the provisions of this rule is provided for in Official Form No. 10-5, the order for the first meeting of creditors.

Subdivision (*d*) is derived from § 47a(8) of the Act. The last clause recognizes that the trustee and the court should not be burdened by the making and consideration of objections to claims when the disposition and the objection can have no consequence in the administration of the estate. Prior to voting on a plan or making distribution under a plan, the trustee would interpose objections to duplicate or overlapping claims or stock interests; a claim should be voted only once and receive only one distribution.

Subdivision (*e*) relieves the court of the substantial burden of making formal orders of allowance of claims to which no objection is filed.

Subdivision (*f*) prescribes the manner in which an objection to a claim shall be made and notice of the hearing thereon given to the claimant, the debtor, and the trustee or debtor in possession. An objection to a claim may be joined with a counterclaim by the trustee, or debtor in possession, but the filing of a counterclaim ordinarily commences an adversary proceeding subject to Part VII of the Bankruptcy Rules. While creditors may make objections to the allowance of a claim, the demands of orderly and expeditious administration have led to a recognition that the right to object is generally centered in the trustee or debtor in possession as provided in subdivision (d). 3 Collier ¶ 57.17[2.2] (1961). Section 57f and § 196 of the Act, requiring objections to claims to be heard and determined as soon as the convenience of the court and the best interests of the estates and claimants will permit, is omitted since these considerations govern all proceedings and matters under Chapter X. See Bankruptcy Rule 903.

Rule 10-402. Claim by Codebtor.

(a) Filing of Claim.

If a creditor has not filed his proof of claim pursuant to Rule 10-401(b), a person who is or may be liable with the debtor to that creditor, or who has secured that creditor, may, during the time for filing claims prescribed by Rule 10-401(b), execute and file a proof of claim pursuant to this rule in the name of the creditor, if known or if unknown, in his own name. No distribution shall be made on the claim except on satisfactory proof that the original debt will be diminished by the amount of distribution. The creditor may nonetheless file a proof of claim pursuant to Rule 10-401(b) and it shall supersede the proof of claim filed pursuant to the first sentence of this subdivision.

(b) Filing of Acceptance; Substitution of Creditor.

A person who has filed a claim pursuant to the first sentence of subdivision (a) of this rule may file an acceptance or rejection of a plan in the name of the creditor, if known or if unknown, in his own name but if the creditor files a proof of claim within the time permitted by Rule 10-401(b), or files a notice with the court of his intention to act in his own behalf prior to confirmation, he shall be substituted for such other person, with respect to that claim, for all purposes of the Chapter X case.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is derived from § 57i of the Act and General Order 21(4). Section 57i is applicable to Chapter X cases. See 6A Collier ¶ 9.02[1], n. 29 (1965). The Act and the general order, however, authorize a filing procedure only by a person who has secured a creditor of the debtor by his "individual undertaking." The rule goes further by authorizing the same procedure to be followed when the person has secured a creditor of the debtor by pledging collateral or otherwise creating a security interest in his own property, without assuming any personal obligation to the creditor. The rule assures a fair opportunity for a co-debtor to exercise the right of filing in the name of the creditor (or in his own name if that of the creditor is unknown) by recognizing that he should not be required to wait until the last minute before the expiration of the period allowed for the filing of claims. In addition to filing the claim, the surety may also file an acceptance or rejection of the plan. The creditor, however, may within the time limits specified by these rules, file his own proof of claim in which case he is substituted for the co-debtor for all purposes including voting. Substitution is also possible even after the time for filing claims has expired by noting with the court, prior to confirmation, his intention to act in his own behalf.

Subdivision (*b*) is not intended to limit any other rights a surety may have.

This rules applies only where the creditor is required by Rule 10-401(b) to file a proof of claim. Otherwise, pursuant to Rule 10-401(a), the list of creditors will suffice to evidence the creditor's claim and protect the surety.

Rule 10-403. Post-Petition Tax Claims.

Notwithstanding Rule 10-401(b), the court may, at any time while a case is pending, permit the filing of a proof of claim for the following:

(1) Claims for taxes owing to the United States, a state, or any subdivision thereof, at the time of the filing of the petition under Rule 10-104 or 10-105 which had not been assessed prior to the date of confirmation of the plan, but which are assessed within one year after the date of the filing of the petition.

(2) Claims for taxes owing to the United States, a state, or any subdivision thereof, after the filing of a petition under Rule 10-104 or 10-105 and which are assessed while the case is pending.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is based upon § 271 of the Act. Express inclusion of taxes owing to a subdivision of a state incorporates the interpretation placed on § 271 which refers to taxes owing to the United States "or any State." *Berryhill* v. *Gerstel*, 196 F.2d 304 (5th Cir. 1952); *Senfour Investment Co.* v. *King County*, 66 Wash.2d 644, 404 P.2d 760 (1965), appeal dismissed and cert. denied 87 S.Ct. 31, 385 U.S. 1, 17 L.Ed.2d 1 (1966).

Rule 10–404. Withdrawal of Claim.

A creditor may withdraw a claim as of right by filing a notice of withdrawal, except as provided in this rule. If, after a creditor has filed a proof of claim, an objection is filed thereto or a complaint is filed against him in an adversary proceeding, or the creditor has accepted or rejected the plan or otherwise has participated significantly in the case, he may not withdraw the claim save on application or motion with notice to the trustee, receiver, or debtor in possession, and on order of the court containing such terms and conditions as the court deems proper.

NOTES OF ADVISORY COMMITTEE ON RULES

Since 1938 it has generally been held that Rule 41 of the Federal Rules of Civil Procedure governs the withdrawal of a proof of claim. *In re Empire Coal Sales Corp.*, 45 F.Supp. 974, 976 (S.D.N.Y.) aff'd sub nom. *Kleid* v. *Ruthbell Coal Co.*, 131 F.2d 372, 373 (2d Cir. 1942); *Kelso* v. *Maclaren*, 122 F.2d 867, 870 (8th Cir. 1941); *In re Hills*, 35 F.Supp. 532, 533 (W.D.Wash.1940). Accordingly, it was ruled in the cited cases that a proof of claim may be withdrawn only subject to approval by the court after an objection has been filed. This constitutes a restriction of the right of withdrawal as recognized by some though by no means all of the cases antedating the promulgation of the Federal Rules of Civil Procedure. See 3 Collier ¶ 57.12 (1961); Note, 20 Bost.U.L.Rev. 121 (1940).

The filing of a claim does not commence an adversary proceeding under these rules, but the filing of an objection against the claimant recognizes the applicability of the considerations underlying Rule 41(a) of the Federal Rules of Civil Procedure to the withdrawal of a claim after it has been put in issue by an objection. Rule 41(a)(2) of the Federal Rules of Civil Procedure provides for a bar to dismissal over the objection of a defendant who has pleaded a counterclaim prior to the service of the plaintiff's motion to dismiss. Although the applicability of this provision to the withdrawal of a claim was assumed in *Conway* v. *Union Bank of Switzerland*, 204 F.2d 603, 608 (2d Cir. 1953), cert. den. 76 S.Ct. 454, 455, 350 U.S. 978, 100 L.Ed. 848, *Kleid* v. *Ruthbell Coal Co.*, *supra*, *Kelso* v. *Maclaren*, *supra*, and *In re Hills*, *supra*, this rule vests discretion in the court to grant, deny, or condition the request of a creditor to withdraw, without regard to whether the trustee, receiver, or debtor in possession has filed a merely defensive objection or a complaint seeking an affirmative recovery of money or property from the creditor.

A number of pre-1938 cases sustained denial of a creditor's request to withdraw his proof of claim on the ground that he had estopped himself or made an election of remedies, 2 Remington, *Bankruptcy*, 186 (Henderson ed. 1956); *cf.* 3 Collier 201 (1961). Voting his claim in an election of a trustee in a bankruptcy case was an important factor in the denial of a request to withdraw in *Standard Varnish Works* v. *Haydock*, 143 Fed. 318, 319–20 (6th Cir. 1906), an *In re Cann*, 47 F.2d 661, 662 (W.D. Pa.1931), and voting on the plan in a Chapter X case would appear to be of similar significance. It has frequently been recognized also that a creditor should not be allowed to withdraw his claim once he has accepted a dividend. *In re Friedman*, 1 Am.B.R. 510, 512 (Ref., S.D.N.Y.1899); 3 Collier 205 (1964); *cf. In re O'Gara Coal Co.*, 12 F.2d 426, 429 (7th Cir.), cert. denied 46 S.Ct. 633, 271 U.S. 683, 70 L.Ed. 1150 (1926). It was held in *Industrial Credit Co.* v. *Hazen*, 222 F.2d 225 (8th Cir. 1955), however, that although a claimant has participated in the first meeting of creditors and in the examination of witnesses, he was entitled under Rule 41(a)(1) of the Federal Rules of Civil Procedure to withdraw his claim as of right when he filed a notice of withdrawal before the trustee filed an objection under § 57g of the Act. While this rule incorporates the post-1938 case law referred to in the first paragraph of this note, it rejects the implication drawn in the *Hazen* case that Rule 41(a) of the Federal Rules of Civil Procedure supersedes the pre-1938 case law that vests discretion in the court to deny or restrict withdrawal of a claim by a creditor on the ground of estoppel or election of remedies. While purely formal or technical participation in a case by a creditor who has filed a claim should not deprive him of a right to withdraw his claim, a creditor who has accepted a dividend or who voted on the plan or otherwise participated actively in a case should be permitted to withdraw only with the approval of the court on terms deemed appropriate by it after notice to the debtor and the trustee, or receiver. 3 Collier 205–06 (1964).

Rule 10–405. Participation and Distribution under Plan.

(a) Distribution.

Subject to the provisions of subdivision (b) of this rule, after confirmation of a plan distribution shall be made, in accordance with the provisions of the plan, to holders of stock, bonds, debentures, notes, and other securities of record at the date the order confirming the plan becomes final whose claims or stock interests have not been disallowed and to other creditors whose claims have been allowed, and to indenture trustees who have filed claims pursuant to Rule 10–401(b)(6) and which are allowed.

(b) Bar Date for Participation in Distribution.

When a plan requires presentment or surrender of securities or the performance of any other act as a condition to participation in distribution under the plan, the court shall, on the confirmation of the plan, enter an order on such notice to all affected persons as it may direct, fixing a time not less than 5 years after the final decree closing the estate within which such action shall be taken. Persons who have not within such time presented or surrendered their securities or who have not taken such other action required by the plan shall not participate in distribution thereunder.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (a) is derived from § 224(3) of the Act. It provides, in essence, that in the case of stockholders and bondholders those entitled to distribution as provide in the plan are holders of record at the date the order of confirmation becomes final. Between the filing of the Chapter X petition and confirmation of the plan a great deal of time will have elapsed during which stock and bonds of the debtor may have been traded. It is more meaningful, therefore, to consider the time of confirmation to determine ownership and participation. Records of a stock transfer agent, registrar, indenture trustee or of the debtor should suffice to determine ownership without any great difficulty or burden. Security holders also include holders of notes and debentures of record.

While duplication of claims could occur, as where an indenture trustee files claims and one of the debenture holders also files a claim, one should be disallowed and only a single distribution made. If a holder is listed or files, the claim of the indenture trustee is reduced or disallowed pro tanto. The court may permit distribution to the indenture trustee on the claims he has filed if the underlying trust indenture so provides.

Fees and costs of indenture trustees for their services are considered by § 221(4) of the Act as expenses of administration subject to court approval which provisions would remain applicable. Such compensation is also covered by Rule 10-215.

Subdivision (b) is derived from § 204 of the Act. This rule requires the court when fixing a time for the release of claims or surrender of securities to set a minimum period of five years. The Act is permissive in this respect while the rule is mandatory. No maximum is contemplated by the Act or this rule. In circumstances where the court deems it desirable for the protection of holders of securities, a longer period can be fixed but that should be left to the discretion of the court. Subdivision (b) is not intended to cover the specific acts required to be done. These will depend upon the provisions of the plan. The notice required under this subdivision may be by publication if the identity or address is unknown, pursuant to Rule 10-209(h). The subdivision should be read together with Rule 10-406 which transfers any such unclaimed money or property to the reorganized company, or new corporation acquiring its assets.

The order under subdivision (b) may be placed in the order confirming the plan or in the final decree entered pursuant to Rule 10-309.

Rule 10-406. Distributions; Unclaimed Money and Securities.

(a) Distributions.

Except as otherwise provided in the plan and except with respect to an indenture trustee authorized by the indenture under which he is trustee to receive distributions, Bankruptcy Rule 308 applies in Chapter X cases to cash distributions made under a plan. Except as otherwise provided in the plan or ordered by the court, consideration other than cash distributed under the plan shall be issued in the name of the creditor or stockholder entitled thereto and if a power of attorney authorizing another person to receive dividends has been executed and filed in accordance with Bankruptcy Rule 910, such consideration shall be transmitted to such other person.

(b) Unclaimed Money and Securities.

Unless otherwise provided in the plan, the securities or cash remaining unclaimed at the expiration of the bar date fixed pursuant to Rule 10-405(b), or any extension thereof, shall be delivered to the new corporation acquiring the assets of the debtor under the plan, if any, otherwise to the reorganized debtor.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (b) is derived from § 205 of the Act which differs from § 66 and provisions in other chapters of the Act where unclaimed property is deposited with the district court and withdrawn pursuant to 28 U.S.C. § 2042. In Chapter X cases such unclaimed property reverts to the reorganized company or new corporation acquiring the assets of the debtor. See 6A Collier ¶ 9.22 (1965). The substance of § 205 providing for the reacquisition of such unclaimed property "free and clear of any and all claims and interests," continues as a statutory directive.

PART V.—COURTS OF BANKRUPTCY; OFFICERS AND PERSONNEL; THEIR DUTIES

Rule 10-501. Administrative Matters.

Part V of the Bankruptcy Rules applies in Chapter X cases except that Rule 509(a) thereof shall include the following additional sentence: "If a Chapter X case is not referred pursuant to Rule 10-103(a), all papers shall be filed with the clerk of the district court or as directed by local rule or order of the district judge."

NOTES OF ADVISORY COMMITTEE ON RULES

Part V of the Bankruptcy Rules (Rules 501 to 515 inclusive) are incorporated to govern certain administrative matters in Chapter X cases. Rule 10-2 indicates the substitution and translation of terms necessary for this purpose.

Pursuant to Rule 10-103(a), a Chapter X case may be automatically referred by the clerk if local rule so provides. In such event, a Chapter X petition filed in a pending case, *e.g.*, bankruptcy, should be filed with the referee; that bankruptcy case would have been automatically referred under Bankruptcy Rule 102. In the absence of such local rule, Rule 10-103 also permits the judge to refer a particular Chapter X case. This ordinarily would occur after filing of the petition which would therefore be filed with the clerk of the district court. All other papers after reference would be filed with the referee.

PART VI.—PROPERTY OF THE ESTATE

Rule 10-601. Petition as Automatic Stay of Actions Against Debtor and Lien Enforcement.

(a) Stay of Actions and Lien Enforcement.

A petition filed under Rule 10-104 or 10-105 shall operate as a stay of the commencement or the continuation of any court or other proceeding against the debtor, or the enforcement of any judgment against it, or of any act or the commencement or continuation of any court proceeding to enforce any lien against its property, or of any court proceeding for the purpose of the rehabilitation of the debtor or the liquidation of its estate.

(b) Duration of Stay.

Except as it may be terminated, annulled, modified, or conditioned by the bankruptcy court under subdivision (c), (d), or (e) of this rule, the stay shall continue until the case is closed, dismissed or converted to bankruptcy or the property subject to the lien is, with the approval of the court, abandoned or transferred.

(c) Relief from Stay.

On the filing of a complaint seeking relief from a stay provided by this rule, the bankruptcy court shall, subject to the provisions of subdivision (d) of this rule, set the trial for the earliest possible date, and it shall take precedence over all matters except older matters of the same character. The court may, for cause shown, terminate, annul, modify, or condition such stay. A party seeking continuation of a stay against lien enforcement shall show that he is entitled thereto.

(d) Ex Parte Relief from Stay.

On the filing of a complaint seeking relief from a stay against any act or proceeding to enforce a lien or any proceeding commenced for the purpose of rehabilitation of the debtor or the liquidation of its estate, relief may be granted without written or oral notice to the adverse party if (1) it clearly appears from specific facts shown by affidavit or by a verified complaint that immediate and irreparable injury, loss, or damage will result to the plaintiff before the adverse party or attorney can be heard in opposition, and (2) the plaintiff's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting his claim that notice should not be required. The party obtaining relief under the subdivision shall give written or oral notice thereof as soon as possible to the debtor, the trustee, receiver, or debtor in possession or, if none has been designated or qualified, to the petitioner or petitioners and, in any event, shall forthwith mail to such person or persons a copy of the order granting relief. On 2 days' notice to the party who obtained relief from a stay provided by this rule without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its reinstatement, and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(e) Availability of Other Relief.

Nothing in this rule precludes the issuance of, or relief from, any stay, restraining or injunction order when otherwise authorized.

Notes of Advisory Committee on Rules

This rule supplements and reinforces the policy of §§ 11a, 113, 116, and 148 of the Act. Section 11a provides in terms for a mandatory stay of all actions founded on dischargeable claims which are pending against the debtor when the petition is filed, and § 116(4) authorizes the stay of pending actions and of the commencement of actions whether or not founded on dischargeable claims. In Chapter X, all claims are dischargeable. Section 116(4) also authorizes the stay of any act or proceeding to enforce any lien on the property of a debtor. The term "lien" is used in this rule to indicate a consensual security interest in personal or real property, a lien obtained by judicial proceedings, a statutory lien, or any other variety of charge against property securing an obligation. While the authority conferred by § 116(4) with respect to staying enforcement of liens is discretionary, § 148 makes it automatic but both can occur only on approval of the petition; nonetheless § 111 gives the court exclusive jurisdiction of the debtor and its property wherever located and this jurisdictional grant includes granting stays and injunctions. See 6 Collier ¶ 3.309[1] (1965). The relief from a stay obtainable under subdivision (c) or (d) of the rule could appropriately include permission to reclaim collateral.

Subdivision (a) provides that the petition shall operate as a stay of any action, or the enforcement of any judgment, or any act of proceeding to enforce a lien on property of the debtor or any proceeding commenced for the liquidation or rehabilitation of the debtor. This includes those matters within §§ 113, 116, and 148, such as a pending bankruptcy proceeding, mortgage foreclosure, equity receivership, and the like. The reference to a stay of other proceedings against the debtor is to signify the inclusion of a pending arbitration proceeding within the scope of the automatic stay.

As provided in *subsection (b)*, the stay provided by this rule continues generally during the pendency of the case unless the case is converted to bankruptcy. In the latter event the stay provisions of Bankruptcy Rules 401 and 601 would become applicable.

A creditor who is subject to the stay of this rule may obtain relief therefrom in appropriate cases by filing a complaint in the court pursuant to subdivision (c). The adversary proceeding thereby commenced is governed by Part VII of the Bankruptcy Rules subject to the requirement of subdivision (c) that the trial date be set for the earliest possible time and given precedence over all other matters not of the same character.

Rule 10-602. Duty of Trustee, Receiver, or Debtor in Possession to Give Notice of Chapter X Case.

Bankruptcy Rule 602 applies in Chapter X cases.

Rule 10-603. Burden of Proof as to Validity of Post-Petition Transfer.

Bankruptcy Rule 603 applies in Chapter X cases.

Rule 10-604. Accounting by Prior Custodian of Property of the Estate.

(a) Accounting Required.

Any person required by the Act to deliver property in his possession or control to the trustee, receiver, or debtor in possession, shall promptly file a written report and account with the court in which the Chapter X case is pending with respect to the property of the estate and his administration thereof.

(b) Examination of Administration.

On the filing of the report and account required by subdivision (a) of this rule and after an examination has been made into the superseded administration, the court shall determine the propriety of such administration, including the reasonableness of all disbursements.

Notes of Advisory Committee on Rules

This rule prescribes the procedure to be followed by any person required to deliver property to the receiver, trustee, or debtor in possession and to account for his disposition of property under §§ 2a(21) and 69d of the Act. See *Emil* v. *Hanley*, 63 S.Ct. 687, 318 U.S. 515, 87 L. Ed. 954 (1943); and *cf.* § 70a(8) of the Act. The examination under subdivision (b) may be initiated (1) on the motion of the trustee or receiver or the application of the custodian required to account under subdivision (a) for the approval of his account and discharge thereon, (2) on the filing of an objection to the custodian's account by any party in interest or (3) on the court's own initiative.

This rule should be read in light of §§ 256, 257 of the Act. As distinguished from § 2a(21), there is no four-month limitation. The Chapter X trustee or debtor in possession is vested with the rights of the prior receiver or trustee and is entitled to immediate possession.

This rule also applies in the situation when the Chapter X case supersedes a prior pending bankruptcy case and requires a receiver or trustee therein to turn over property in his possession, as does § 256 of the Act.

Rule 10-605. Money of the Estate: Deposit and Disbursement.

Bankruptcy Rule 605 (b) and (c) apply in Chapter X cases.

Notes of Advisory Committee on Rules

Subdivision (a) of Bankruptcy Rule 605 is inapplicable in Chapter X cases because it concerns collecting the property of the estate and converting it to money; these parts of a trustee's functions are applicable only where the estate is being liquidated.

Rule 10-606. Rejection of Executory Contracts.

When a motion is made for the rejection of an executory contract, including an unexpired lease, other than as part of the plan, the court shall set a hearing on notice to the parties to the contract and to such other parties in interest as the court may direct.

Notes of Advisory Committee on Rules

This rule is derived from § 116(1) of the Act. As provided in § 216(4) of the Act, the plan may also include provisions for the rejection of executory contracts of the debtor, and § 202 provides that if an executory contract is rejected by the plan or pursuant to permission given by the court any person injured by such rejection shall be deemed a creditor.

Chapters XI, XII and XIII of the Act contain substantially identical provisions for rejection of executory contracts with permission of the court (§§ 313(1), 413(1), and 613(1)), or by provisions in the plan (§§ 357(2), 461(4), and 646(6)) and for the claims of those injured by the rejection (§§ 353, 458 and 642). In view of these provisions in Chapter X it has long been recognized that so much of § 70b of the Act as fixes a time for the trustee to assume or reject executory contracts and provides that any contract not assumed or rejected within that time shall be deemed to be rejected is inapplicable in Chapter X proceedings. *Texas Importing Co. v. Banco Popular de Puerto Rico*, 360 F.2d 582, 584 (5th Cir. 1966); *Title Insurance & Guaranty Co. v. Hart*, 160 F.2d 961 (9th Cir. 1947), cert. den. 68 S.Ct. 64, 332 U.S. 761, 92 L.Ed. 347 (1947); *In re M. & S. Amusement Enterprises, Inc.*, 122 F.Supp. 364 (DDel.1954); *In re Childs Co.*, 64 F.Supp. 282 (S.D.N.Y.1944). As was said in *Texas Importing Co. v. Banco Popular de Puerto Rico, supra*, at p. 584, these provisions in Chapter X "clearly indicate Congress intended that before an executory contract should be rejected, a judicial hearing and inquiry, at which interested parties might be heard, should be held, and that an executory contract could be rejected only with permission of the court. . . ." See also *B. J. M. Realty Corp. v. Ruggieri*, 326 F.2d 281, 338 F.2d 653 (2d Cir. 1964), holding that a lessor waived his option to terminate a lease by accepting rental payments for four months following the filing of a Chapter XI petition by the lessee so that the lease could thereafter be affirmed, and *Floro Realty & Investment Co. v. Steam Electric Corp.*, 128 F.2d 338 (8th Cir. 1942), holding that where the lessor exercises his option to cancel a lease four months after the lessee files a Chapter X petition all liability for future rent is terminated.

It has also been recognized that, under the pertinent provisions of Chapters X and XI, the other party to an executory contract has no provable claim until his contract is rejected so that, if there has been no rejection with permission of the court prior to confirmation of a plan, "he may insist that his contract be either rejected or assumed under the plan and may apply to the . . . court to protect his interest at the confirmation hearing or before." *In re Greenpoint Metallic Bed Co.*, 113 F.2d 881, 886 (2d Cir. 1940); *Mohonk Realty Corp. v. Wise Shoe Stores, Inc.*, 111 F.2d 287, 290 (2d Cir. 1940), cert. denied 61 S.Ct. 47, 311 U.S. 654, 85 L.Ed. 418 (1940). See also *Philadelphia Co. v. Dipple*, 61 S.Ct. 538, 541, 312 U.S. 168, 174, 85 L.Ed. 651, 655 (1941).

Rule 10-607. Appraisal and Sale of Property; Compensation and Eligibility of Appraisers and Auctioneers.

(a) Appraiser: Appointment and Duties.

The court may appoint one or more competent and disinterested appraisers who shall prepare and file with the court an appraisal of the property of the debtor. The court may prescribe how such appraisal shall be made.

(b) Sale of Property.

The court may, on such notice as it may direct and for cause shown, authorize the trustee, receiver, or debtor in possession to lease or sell any real or personal property of the debtor, on such terms and conditions as the court may approve.

(c) Compensation and Eligibility of Auctioneers and Appraisers.

Bankruptcy Rule 606(c) applies in Chapter X cases to any appraiser or auctioneer appointed by the court.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is derived from § 116(3) of the Act, and incorporates Bankruptcy Rule 606(c) whenever the court appoints an appraiser or auctioneer.

Because the objective of Chapter X cases is different from that of bankruptcy cases, the thrust of the Chapter X rule is not to require an appraisal but merely to permit one on application. In bankruptcy, there would be an appraisal unless the court determines it to be unnecessary. See Bankruptcy Rule 606(a).

Subdivision (b) also recognizes a difference between the two types of cases. In bankruptcy the property will be sold; in a Chapter X case a sale, other than in the ordinary case of business, would be exceptional. This subdivision follows § 116(3) of the Act permitting flexibility in the method and form of the sale but the court could, in prescribing such matters, refer to Bankruptcy Rule 606(b).

Rule 10-608. Abandonment of Property.

After hearing on such notice as the court may direct and on approval by the court, the trustee, receiver, or debtor in possession may abandon any property.

Rule 10-609. Redemption of Property from Lien or Sale.

Bankruptcy Rule 609 applies in Chapter X cases.

Rule 10-610. Prosecution and Defense of Proceedings by Trustee, Receiver, or Debtor in Possession.

Bankruptcy Rule 610 applies in Chapter X cases.

NOTES OF ADVISORY COMMITTEE ON RULES

Notwithstanding the provisions of Bankruptcy Rule 610, it is quite appropriate and desirable for a trustee to obtain prior court approval before instituting actions in behalf of the estate, particularly actions resulting from the trustee's investigation made under § 167 of the Act and Rule 10-208.

Rule 10-611. Preservation of Voidable Transfer.

Bankruptcy Rule 611 applies in Chapter X cases.

Rule 10-612. Proceeding to Avoid Indemnifying Lien or Transfer to Surety.

Bankruptcy Rule 612 applies in Chapter X cases.

PART VII.—ADVERSARY PROCEEDINGS

Rule 10-701. Adversary Proceedings.

Part VII of the Bankruptcy Rules governs any proceeding instituted by a party before a bankruptcy judge in a Chapter X case to (1) recover money or property other than a proceeding under Rule 10-217 or Rule 10-604, (2) determine the validity, priority, or extent of a lien or other interest in property, (3) sell property free of a lien or other interest for which the holder can be compelled to take a money satisfaction, (4) obtain an injunction, or (5) obtain relief from a stay as provided in Rule 10-601. Such a proceeding shall be known as an adversary proceeding.

NOTES OF ADVISORY COMMITTEE ON RULES

Part VII of the Bankruptcy Rules (Rules 701 to 782 inclusive) are incorporated to govern the procedural aspects of most of the litigation within the jurisdiction of the court in Chapter X cases. This Chapter X rule substitutes a definition of adversary proceedings in Chapter X cases for that contained in Bankruptcy Rule 701 to take account of the differences between the two types of cases. Rule 10-2 indicates other substitutions and translations of terms necessary for this purpose.

Chapter X of the Act does not contain provisions for the revocation of confirmation for fraud similar to those in the other debtor-relief chapters. Such a proceeding under the Chapter X Rules would be governed by Bankruptcy Rule 914.

PART VIII.—APPEAL TO DISTRICT COURT

Rule 10-801. Appeal to District Court.

Part VIII of the Bankruptcy Rules applies in Chapter X cases except that:

(1) Rule 802(c) thereof shall read as follows:

"(c) Extension of time for appeal. The referee may extend the time for filing the notice of appeal by any party for a period not to exceed 20 days from the expiration of the time otherwise prescribed by this rule. A request to extend the time for filing a notice of appeal must be made before such time has expired, except that a request made after the expiration of such time may be granted upon a showing of excusable neglect if the judgment or order does not authorize the sale of any property or the issuance of any certificate of indebtedness, or is not a judgment or order approving or dismissing a petition under Rule 10–113, or converting a Chapter X case to Chapter XI under Rule 10–117, or approving a plan under Rule 10–303, or confirming a plan under Rule 10–307, or dismissing a Chapter X case, or converting a Chapter X case to bankruptcy or to Chapter XI under Rule 10–308."

(2) The following shall be added to Rule 805 thereof:

"Unless an order approving a sale of property of issuance of a certificate of indebtedness is stayed pending appeal, the sale to a good faith purchaser or the issuance of a certificate to a good faith holder shall not be affected by the reversal or modification of such order on appeal whether or not the purchaser or holder knows of the pendency of the appeal."

NOTES OF ADVISORY COMMITTEE ON RULES

Part VIII of the Bankruptcy Rules (Rules 801 to 814 inclusive) are incorporated to govern appeals from judgments or orders of referees to district courts in Chapter X cases.

Under Bankruptcy Rule 802(c) the time to appeal an order authorizing a sale of any property may not be extended unless a request therefor is filed within the regular appeal time. The same policy of establishing finality of referees' orders applies to orders relating to Chapter X petitions, approving a plan, confirming a plan, or dismissing or converting a Chapter X case in order for subsequent events to occur without fear of disruption.

Paragraph (2) of this rule is in accord with case law effectuating a sale pending appeal to a good faith purchaser in the absence of the appellant obtaining a stay of the order approving the sale.

PART IX.—GENERAL PROVISIONS

Rule 10-901. General Provisions.

Part IX of the Bankruptcy Rules applies in Chapter X cases, except that:

(1) The definitions of words and phrases in § 106 of the Act govern their use in the Chapter X Rules to the extent they are not inconsistent therewith.

(2) "Bankruptcy judge" as defined in Rule 901(7) shall also mean the district judge acting in a Chapter X case when there has been no reference under Rule 10–103.

(3) The references to various rules in Rule 906(b) shall also include a reference to Chapter X Rule 10–212(a).

(4) The references to various rules in Rule 906(c) shall also include references to Chapter X Rules 10–209(a) and 10–212(a).

(5) The exception in Rule 910(c) for "the execution and filing of a proof of claim" shall be read to include also "the execution and filing of an acceptance or rejection of a plan."

(6) The reference in Rule 919(a) shall be read as a reference to Chapter X Rule 10–209(a).

(7) The reference in Rule 922(b) to Rule 102 shall be read as a reference to Chapter X Rule 10–103.

NOTES OF ADVISORY COMMITTEE ON RULES

With the changes, substitutions, and translations indicated in this rule and by Rule 10–2, Part IX of the Bankruptcy Rules (Rules 901 to 928 inclusive) applies in Chapter X cases.

OFFICIAL CHAPTER X FORMS

[NOTE. These official forms shall be observed and used, with such alterations as may be appropriate to suit the circumstances. See Bankruptcy Rule 909.]

Form	
10–1.	Voluntary Petition Under Chapter X.
10–2.	Involuntary Petition Under Chapter X.
10–3.	Summons to Debtor.
10–4.	Certificate of Retention of Debtor in Possession.
10–5.	Order for First Meeting of Creditors and Stockholders and Related Orders, Combined With Notice Thereof and of Automatic Stay.
10–6.	Order Approving Plan and Fixing Time for Filing Acceptances or Rejections, Combined With Notice Thereof.
10–7.	Ballot for Accepting or Rejecting Plan.
10–8.	Order Permitting Filing Modification of Plan, Fixing Hearing and Time for Rejection of Modification, Combined With Notice Thereof.
10–9.	Order Confirming Plan.

FORM NO. 10-1. VOLUNTARY PETITION UNDER CHAPTER X

United States District Court
for the ______ District of ______

In re

__________ __________, Bankruptcy No. __________
Debtor

VOLUNTARY PETITION UNDER CHAPTER X

1. Petitioner's post-office address is ____________
____

2. Petitioner is a corporation organized and existing under the laws of __________ and is qualified to file this petition and is entitled to the benefits of Chapter X of the Bankruptcy Act.

3. Petitioner has had its principal place of business [*or* has had its principal assets] within this district for the preceding 6 months [*or* for a longer portion of the preceding 6 months than in any other district].

4. Petitioner is insolvent [*or* unable to pay its debts as they mature].

5. The nature of petitioner's business is _________
____
____

6. The indebtedness of petitioner, liquidated as to amount and not contingent as to liability, is $250,000 or over [*or* less than $250,000].

7. The assets, liabilities, and capital stock of petitioner are substantially as follows [attach most recent financial statements or set forth sufficient information about the business to enable the court to

make findings with respect to its preliminary approval of the petition]:

(a) Assets. Description and location of the principal assets of petitioner: ----------------

----

(b) Liabilities. The principal liabilities of petitioner consist of ----------------

----

(c) Capital Stock. The authorized, issued and outstanding capital stock of petitioner is as follows:

Authorized:

Issued and outstanding:

(d) Other facts, if any, affecting financial condition:

----

8. There are no proceedings pending affecting the property of petitioner, except as follows: ----------

----

9. No plan of reorganization, readjustment, or liquidation affecting the property of petitioner is pending, either in connection with or without any judicial proceeding, except as follows: -------------- --; no other petition by or against petitioner is pending under Chapter X of the Act; nor is any other bankruptcy case, initiated by a petition by or against petitioner now pending [*or* Petitioner is a bankrupt in Bankruptcy Case No. ------ pending in this court].

10. The specific facts showing the need for relief under Chapter X of the Act are as follows: [state appropriate facts including why relief under Chapter XI would not be adequate] ---------------

----

Wherefore petitioner prays for relief in accordance with Chapter X of the Act.

Signed: ------ ------,
Attorney for Petitioner.
Address: ---------,

State of ------------- }
County of ------------ } *ss.*

I, ------ ------, the president [*or* other officer *or* an authorized agent] of the corporation named as petitioner in the foregoing petition, do hereby swear that the statements contained therein are true according to the best of my knowledge, information, and belief, and that the filing of this petition on behalf of the corporation has been authorized.

------ ------,

Subscribed and sworn to
before me on--------------------------------

------ ------,
[*Official character*]

NOTES OF ADVISORY COMMITTEE ON RULES

This form is new. The recitals in the form include all the matters required by the Act to be alleged in an original petition.

Only the original need be signed and verified, but the copies should be conformed to the original. See Bankruptcy Rule 911(c).

FORM NO. 10–2. INVOLUNTARY PETITION UNDER CHAPTER X

[*Caption, other than designation, as in Form No. 10–1*]

INVOLUNTARY PETITION UNDER CHAPTER X

1. Petitioners, ------ ------, of *----------, and ------ of *---------, and ----- ------ of *------, ------ ------ are creditors of ---- ------, debtor, of *----------, having claims against debtor, liquidated as to amount and not contingent as to liability, amounting in the aggregate to $5,000 or over. The nature and amount of petitioners' claims are as follows: ----------------------------------

----

2. The debtor is a corporation organized and existing under the laws of ---------- and is subject to an involuntary petition under Chapter X of the Bankruptcy Act.

3. The debtor has had its principal place of business [*or* has had its principal assets] within the district for the preceding 6 months [*or* for a longer portion of the preceding 6 months than in any other district].

4. The debtor is insolvent [*or* unable to pay its debts as they mature].

5. The nature of the debtor's business is----------

----

6. The indebtedness of the debtor liquidated as to amount and not contingent as to liability, is $250,000 or over [*or* less than $250,000].

7. The assets, liabilities, capital stock, and financial condition of debtor are substantially as follows [attach most recent financial statements or set forth sufficient information about the business to enable the court to make findings with respect to its preliminary approval of the petition]:

(a) The assets of the debtor consist of [state description and location]:

------------------------------	$ ----------
------------------------------	----------
------------------------------	----------
------------------------------	----------
------------------------------	----------
Total ------------------	$ ----------

(b) The principal liabilities of the debtor consist of:

____________________________	$	____________
____________________________		____________
____________________________		____________
____________________________		____________
		____________
Total ____________________	$	____________

(c) The issued and outstanding capital stock of the debtor are: ______________________________ ____ ____ ____

(d) Other facts, if any, affecting the financial condition of the debtor: ____________________________ ____ ____ ____

8. There are no pending proceedings affecting the property of the debtor, except as follows: __________ ____ ____

9. No plan of reorganization, readjustment, or liquidation affecting the property of the debtor is pending either in connection with or without any judicial proceeding, except as follows: ____________ ____ ____; no other petition by or against the debtor is pending under Chapter X of the Act; nor is any other bankruptcy case, initiated by a petition by or against the debtor now pending [*or* the debtor is a bankrupt, in Bankruptcy Case No. ______ pending in this court].

10. The specific facts showing the need for relief under Chapter X of the Act are as follows: [state appropriate facts including why relief under Chapter XI would not be adequate] ______________________ ____ ____.

11. [A receiver [*or* trustee] has been appointed for *or* has taken charge of all or the greater portion of the property of the debtor in a pending equity proceeding as follows: ___________________________ ____ ____] *or*

[An indenture trustee [*or* a mortgagee under a mortgage] is, by reason of a default, in possession of all or the greater portion of the property of the debtor, as follows: ____________________________ ____ ____] *or*

[A proceeding to foreclose a mortgage *or* to enforce a lien against all or the greater portion of the property of the debtor is pending, as follows: ________ ____ ____] *or*

[Within the 4 months preceding the filing of this petition, the debtor committed an act of bankruptcy in that it did on ___________________________ ____ ____].

Wherefore petitioners pray for relief in accordance with Chapter X of the Act.

Signed: ______ ______,
Attorney for Petitioners.
Address: ________,
____

State of ______________ }
County of ____________ } *ss.*

I, ______ ______, one of the petitioners named in the foregoing petition do hereby swear that the statements contained therein are true according to the best of my knowledge, information, and belief.

______ ______,
Petitioner.

Subscribed as sworn to before me on ____________

______ ______,
[*Official character*]

*State post-office address.

NOTES OF ADVISORY COMMITTEE ON RULES

This form is new. It may be used, with appropriate changes, by an indenture trustee filing a petition pursuant to § 126 of the Act. The corporate verification of Form 10-1 or partnership verification of Bankruptcy Form No. 5 may be adapted for use. Only the original need be signed and verified but the copies should be conformed to the original. See Bankruptcy Rule 911(c).

FORM NO. 10-3. SUMMONS TO DEBTOR

[*Caption, other than designation, as in Form No. 10-1*]

SUMMONS

To the Above-named debtor:

An involuntary petition for your reorganization under Chapter X of the Bankruptcy Act having been filed on __________ in this court of bankruptcy,

You are hereby summoned and required to file with this court and to serve upon the petitioners' attorney, whose address is ______________________ ____, an answer to the petition which is herewith served upon you, on or before __________________________.

If you fail to do so, the petition may be approved by default.

______ ______,
Bankruptcy Judge.

[*If Appropriate*] ______ ______,
Clerk of the District Court.

[Seal of the United States District Court]

Date of Issuance: __________

NOTES OF ADVISORY COMMITTEE ON RULES

Pursuant to Rule 10-111, the clerk of the district court is to issue the summons when an original involuntary petition is filed. If the Chapter X petition is filed in a pending bankruptcy case, the bankruptcy judge is to issue the summons; this form therefore provides for the appropriate manner of issuance.

FORM NO. 10-4. CERTIFICATE OF RETENTION OF DEBTOR IN POSSESSION

[*Caption, other than designation, as in Form No. 10-1*]

CERTIFICATE OF RETENTION OF DEBTOR IN POSSESSION

I hereby certify that the above-named debtor continues in possession of its estate as debtor in possession, no trustee having been appointed.

Dated: __________

______ ______,
Bankruptcy Judge.

NOTES OF ADVISORY COMMITTEE ON RULES

Where the indebtedness is less than $250,000 the court may permit the debtor to remain in possession in place of appointing a trustee, pursuant to Rule 10-202. Accordingly, where evidence is required, this certificate may be used pursuant to Rule 10-204. A copy of this certificate is not, however, within the purview of § 21g of the Act for purposes of recordation and in such cases a copy of the petition itself should be recorded.

FORM NO. 10-5. ORDER FOR FIRST MEETING OF CREDITORS AND STOCKHOLDERS AND RELATED ORDERS, COMBINED WITH NOTICE THEREOF AND OF AUTOMATIC STAY

[*Caption, other than designation, as in Form No. 10-1*]

ORDER FOR FIRST MEETING OF CREDITORS AND STOCKHOLDERS AND HEARING ON APPROVAL OF THE PETITION, RETENTION OF TRUSTEE OR DEBTOR IN POSSESSION, COMBINED WITH NOTICE THEREOF AND OF AUTOMATIC STAY

To the debtor, its creditors, and stockholders, and other parties in interest:

A petition having been filed, on __________ by ______ ______, the above-named debtor of *__________, [*or* against ________________________ ____, of* __________,] seeking relief under Chapter X of the Bankruptcy Act, it is ordered, and notice is hereby given, that:

1. The first meeting of creditors and stockholders shall be held at ____________ on ____________ at ______ o'clock ______m.;

2. The last date for filing an answer to the petition by any creditor, indenture trustee, or stockholder is __________. If any such answer is timely filed, a hearing on the approval of the petition will be held at __________ on __________, at __________ o'clock ______m. [*or* at the first meeting of creditors and stockholders].

3. The hearing on the retention of the trustee, __________, of *__________ [*or* the debtor in possession] will be held at the first meeting of creditors and stockholders [*or* a trustee will be appointed at such meeting and a date will then be fixed for the hearing on his retention in office].

4. The trustee [*or* debtor in possession] has filed or will file a list of creditors and stockholders pursuant to Rule 10-108. Any creditor holding a listed claim which is not listed as disputed, contingent, or unliquidated as to amount, may, but need not, file a proof of claim in this case. Creditors whose claims are not listed or whose claims are listed as disputed, contingent, or unliquidated as to amount and who desire to participate in the case or share in any distribution must file their proofs of claim on or before __________, which date is hereby fixed as the last day for filing a proof of claim [*or, if appropriate,* on or before a date to be later fixed of which you will be notified]. Any creditor who desires to rely on the list has the responsibility for determining that he is accurately listed.

You are further notified that:

The first meeting may be continued or adjourned from time to time by order made in open court, without further written notice to creditors and stockholders.

When required pursuant to Rule 10-303 notice of the time to file acceptances or rejections of a plan shall be transmitted to holders of stock, bonds, debentures, notes, and other securities of record at the date the order approving a plan is entered.

At the first meeting, creditors and stockholders may examine the debtor as permitted by the court, and transact such other business as may properly come before such meeting.

The filing of the petition by [*or* against] the debtor above-named operates as a stay of the commencement or continuation of any action against the debtor, or the enforcement of any judgment against it, of any act or the commencement or continuation of any court proceeding to enforce any lien on the property of the debtor and of any court proceeding commenced for the purpose of rehabilitation of the debtor or the liquidation of its estate as provided by Rule 10-601.

[*If appropriate*] __________ of *__________ has been appointed receiver of the estate of the above-named debtor.

Dated: ____________

______ ______,
Bankruptcy Judge.

*State post-office address.

NOTES OF ADVISORY COMMITTEE ON RULES

This form is new. As provided in Rule 10-113 the court is to approve the petition prior to the first meeting if practicable. The hearing on approval may be conducted at the first meeting if a timely answer to the petition is filed and the hearing is not held prior thereto. This form provides for notice that the hearing on approval may be held at such meeting. Even if the petition has received preliminary approval prior to the first meeting, the court will specify the last date for the filing of an answer to the petition by parties other than the debtor. The debtor's time for filing an answer to an involuntary petition runs from the time of issuance of the summons pursuant to Rule 10-112(a).

At this hearing also, the court will determine whether the trustee or debtor in possession should be retained in office, if objections have been filed thereto. In the event the court has not appointed a trustee before the meeting, such appointment is to be made at the meeting and a subsequent hearing date will be fixed to determine any objections raised as to such appointment.

Creditors holding claims which are not listed as disputed, contingent, or unliquidated as to amount, and stockholders need not file proofs of claims and interests to participate in the Chapter X case. The lists filed with the court will be sufficient to evidence such claims and interests. But it is the creditor's responsibility to determine if his claim is accurately listed. Creditors may, however, file such proof as they desire and the court may, in its discretion, fix a bar date for such filing.

This notice also states that those security holders of record at the date the order approving a plan becomes final are entitled to accept or reject a plan. Security holders include holders of notes, debentures, stock and bonds.

FORM NO. 10-6. ORDER APPROVING PLAN AND FIXING TIME FOR FILING ACCEPTANCES OR REJECTIONS, COMBINED WITH NOTICE THEREOF

[*Caption, other than designation, as in Form No. 10-1*]

ORDER APPROVING PLAN AND FIXING TIME FOR FILING ACCEPTANCES OR REJECTIONS, COMBINED WITH NOTICE THEREOF

A plan under Chapter X of the Bankruptcy Act having been filed by ______ ______ on __________ [*if appropriate*, and by ______ ______, on ________] [*if appropriate*, as modified by a modification filed on __________]; and

It having been determined after hearing on notice that:

1. The provisions of Article X of Chapter X of the Act have been complied with; and

2. The plan is [*or* plans are] fair and equitable, and feasible; and

3. The plan has [*or* plans have] been proposed in good faith and not by any means forbidden by law;

It is ordered, and notice is hereby given that:

A. The plan proposed by ______ ______ dated __________ [*if appropriate*, and by ______ ______, dated __________] is [are] approved.

B. __________ is fixed as the last day for filing written acceptances or rejections of such plan [*or* plans].

C. Within ______ days after the entry of this order, the trustee [*or* debtor in possession] shall transmit by mail to creditors, stockholders, and other parties in interest as provided in Rule 10–303, the plan [*or* plans] and a summary [*or* summaries] thereof approved by the court, a summary approved by the court of its opinion, if any dated __________, approving the plan [*or* plans], and a summary of the report, if any, of the Securities and Exchange Commission, dated __________ prepared by such Commission.

D. If acceptances are filed for more than one approved plan, preferences among the plans so accepted may be indicated.

Dated: __________

______ ______
Bankruptcy Judge.

[*If the court directs that a copy of the opinion, or report should be transmitted in lieu of or in addition to the summary thereof, the appropriate change should be made in paragraph C of this Order.*]

NOTES OF ADVISORY COMMITTEE ON RULES

This form is new. As provided in Rule 10–303, the stockholders and other security holders of record at the date the order approving a plan is entered are those to whom the documents required by the rule and the order are to be mailed and who are entitled to accept or reject the plan. While the order provides for mailing summaries of its opinion and the SEC report, the court may direct that the complete opinion or report should be transmitted.

Pursuant to Rule 10–303, the court may approve more than one plan which satisfies the requirements of Chapter X of the Act. In such event, those parties whose acceptances are required may, under Rule 10–304, accept more than one plan and may indicate their preferences among the plans so accepted. Paragraph D of this form provides for notice to that effect.

FORM NO. 10–7.
BALLOT FOR ACCEPTING OR REJECTING PLAN

[*Caption, other than designation, as in Form No. 10–1*]

BALLOT FOR ACCEPTING OR REJECTING PLAN

The plan referred to in this ballot can be confirmed by the court only if two-thirds of the amount of creditors in each class and a majority of stockholders in each class voting on the plan accept the plan. Return of this ballot accepting or rejecting a plan will be deemed to be the filing of a proof of claim or stock interest only for the purpose of computing the vote. This ballot should be returned to:

Name: ______ ______
Address: ______________
____

[*If stockholder*] The undersigned, the holder of [*state number*] ______ shares of [*describe type*] __________ stock of the above-named debtor, represented by Certificate(s) No. __________ registered in the name of __________,

[*If bondholder, debenture holder or other debt security holder*] The undersigned, the holder of [*state unpaid principal amount*] $______ of [*describe security*] __________ of the above-named debtor, due ________ [*if applicable* registered in the name of __________] [*if applicable* bearing serial number(s) __________],

[*If holder of general claim*] The undersigned, a creditor of the above-named debtor in the unpaid principal amount of $______,

[*Check one box*]

[ ] ACCEPTS
[ ] REJECTS

the plan for the reorganization of the above-named debtor filed by ______ ______ on __________ as approved by the court on __________ for submission for your vote.

Dated: __________

Print or type name: ______ ______
Signed: ______ ______
[*if appropriate*] By: ______ ______
as: ____________
Address: ____________
____

The trustee or other person transmitting this ballot to creditors or stockholders should complete the blanks indicating the person filing the plan, the date of the plan, the date of the court's order approving the plan, and the person to whom the ballot should be returned.

NOTES OF ADVISORY COMMITTEE ON RULES

This form is new. Rule 10–303 requires the trustee, when transmitting the plan, the summary of the court's opinion, if any, approving it, and the summary of the report of the Securities and Exchange Commission, to include a form of ballot conforming substantially to Official Form No. 10–7. This form may be modified as necessary to incude descriptions of as many plans as may have been approved by the court and on which a vote will be taken. This form should be tailored, in that event, so that creditors and stockholders may express preferences among the plans they wish to accept. The following may be an additional paragraph for such use:

"['If more than one plan is accepted the following may but need not be completed] The undersigned prefers the plans accepted herein in the following order: [Describe plans]

1. ____
2. ____"

The form can also be modified to take account of the types of parties who will vote as among stockholders, security holders, and creditors.

The trustee should, prior to transmitting the form, complete the blanks which will describe the plan and the date of the court order approving it, and the name and address of the person to whom it should be returned, for the information of creditors and stockholders.

FORM NO. 10-8. ORDER PERMITTING FILING MODIFICATION OF PLAN, FIXING HEARING AND TIME FOR REJECTION OF MODIFICATION, COMBINED WITH NOTICE THEREOF

[*Caption, other than designation, as in Form No. 10-1*]

Order Permitting Filing Modification of Plan, Fixing Hearing and Time for Rejection of Modification, Combined With Notice Thereof

To the debtor, its creditors and stockholders, and other parties in interest:

A modification of the plan dated ---------- having been filed by ------ ------ on ----------, it is ordered and notice is hereby given that:

1. The modification, a copy [*or* a summary] of which is attached hereto, may be filed.

2. The hearing for the consideration of the proposed modification shall be held at ---------- on ---------- at ------ o'clock --m., which hearing may be continued or adjourned from time to time by order made in open court, without further notice to creditors and stockholders.

3. ---------- is fixed as the last day for filing a written rejection of the modification. Any creditor or stockholder who has accepted the plan and who fails to file a written rejection of the modification within the time above specified shall be deemed to have accepted the plan as modified.

Dated: ----------

------ ------,
Bankruptcy Judge.

Notes of Advisory Committee on Rules

This form, which is new, combines the order and notice provided by Rule 10-306 where a modification of a plan is proposed.

FORM NO. 10-9. ORDER CONFIRMING PLAN

[*Caption, other than designation, as in Form No. 10-1*]

Order Confirming Plan

The plan under Chapter X of the Bankruptcy Act filed by ------ ------ on ---------- [*if appropriate*, as modified by a modification filed on ----------,] and a summary thereof having been transmitted to creditors and stockholders; and

It having been determined after hearing on notice:

1. That the plan has been accepted in writing by the creditors and stockholders whose acceptance is required by law; and

2. That acceptance of the plan has been procured in good faith and not by any means forbidden by law; that the provisions of Chapter X of the Act have been complied with; that the proposal of the plan and its acceptance are in good faith and have not been made or procured by means or promises forbidden by the Act; and, that the plan is fair and equitable, and feasible; and

3. All payments made or promised by the debtor or by a corporation issuing securities or acquiring property under the plan or by any other person, for services and for costs and expenses in, or in connection with, the case or in connection with the plan and incident to the reorganization, have been fully disclosed to the court and are reasonable or, if to be fixed after confirmation of the plan, will be subject to the approval of the court; and

4. The identity, qualifications, and affiliations of the persons who are to be directors or officers, or voting trustees, if anv, upon the consummation of the plan, have been fully disclosed, and that the appointment of such persons to such offices, or their continuance therein, is equitable, compatible with the interests of the creditors and stockholders and consistent with public policy:

It is ordered that:

The plan filed by ------ ------ on ---------- and approved by an order of the court entered on ----------, a copy of which plan is attached hereto, is confirmed.

Dated: ----------

------ ------,
Bankruptcy Judge.

Notes of Advisory Committee on Rules

This form is new. The order of confirmation specifies those matters heard and determined by the court at the hearing on confirmation which are required by the Act in order for a plan to be confirmed.

TITLE V.—CHAPTER XI RULES

Rule
11-1. Scope of Chapter XI Rules and Forms; Short Title.
11-2. Meaning of Words in the Bankruptcy Rules When Applicable in a Chapter XI Case.
11-3. Commencement of Chapter XI Case.
11-4. Chapter XI Cases Originally Commenced Under Another Chapter of the Act.
11-5. Reference of Cases; Withdrawal of Reference and Assignment.
11-6. Original Petition.
11-7. Petition in Pending Case.
11-8. Partnership Petition.
11-9. Caption of Petition.
11-10. Filing Fees.
11-11. Schedules, Statement of Affairs, and Statement of Executory Contracts.
11-12. Verification and Amendment of Petition and Accompanying Papers.
11-13. Venue and Transfer.
11-14. Joint Administration of Cases Pending in Same Court.
Rule
11-15. Conversion to Chapter X.
11-16. Death or Insanity of Debtor.
11-17. Debtor Involved in Foreign Proceeding.
11-18. Appointment of Receiver; Continuance of Trustee or Debtor in Possession; Removal.
11-19. Receivers for Estates When Joint Administration ordered.
11-20. Qualification by Receiver and Disbursing Agent; Indemnity; bonds; evidence.
11-21. Limitation on Appointment of Receivers.
11-22. Employment of Attorneys and Accountants.
11-23. Authorization of Trustee, Receiver, or Debtor in Possession to Conduct Business of Debtor.
11-24. Notice to Parties in Interest and the United States.
11-25. Meetings of Creditors.
11-26. Examination.
11-27. Selection of Creditors' Committee and Standby Trustee.
11-28. Solicitation and Voting of Proxies.
11-29. Creditors' Committee.

Rule
11-30. Duty of Trustee, Receiver, or Debtor in Possession to Keep Records, Make Reports, and Furnish Information.
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11-32. Examination of Debtor's Transactions With His Attorney.
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11-34. Withdrawal of Acceptance or Claim.
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11-36. Filing of Plan; Transmission to Creditors; Adjourned Meeting.
11-37. Acceptance or Rejection of Plans.
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11-39. Modification of Plan Before Confirmation.
11-40. Modification of Plan After Confirmation Where Court Has Retained Jurisdiction.
11-41. Revocation of Confirmation.
11-42. Dismissal or Conversion to Bankruptcy Prior To or After Confirmation of Plan.
11-43. Confirmation as Discharge.
11-44. Petition as Automatic Stay of Actions Against Debtor and Lien Enforcement.
11-45. Duties of Debtor.
11-46. Apprehension and Removal of Debtor to Compel Attendance for Examination.
11-47. Exemptions.
11-48. Determination of Dischargeability of a Debt; Judgment on Nondischargeable Debt; Jury Trial.
11-49. Duty of Trustee, Receiver, or Debtor in Possession to Give Notice of Chapter XI Case.
11-50. Burden of Proof as to Validity of Post-Petition Transfer.
11-51. Accounting by Prior Custodian of Property of the Estate.
11-52. Money of the Estate; Deposit and Disbursement.
11-53. Rejection of Executory Contracts.
11-54. Appraisal and Sale of Property; Compensation and Eligibility of Appraisers and Auctioneers.
11-55. Abandonment of Property.
11-56. Redemption of Property from Lien or Sale.
11-57. Prosecution and Defense of Proceedings by Trustee, Receiver, or Debtor in Possession.
11-58. Preservation of Voidable Transfer.
11-59. Proceeding to Avoid Indemnifying Lien or Transfer to Surety.
11-60. Courts of Bankruptcy; Officers and Personnel; Their Duties.
11-61. Adversary Proceedings.
11-62. Appeal to District Court.
11-63. General Provisions.

Rule 11-1. Scope of Chapter XI Rules and Forms; Short Title.

The rules and forms in this Title V govern the procedure in courts of bankruptcy in cases under Chapter XI of the Bankruptcy Act. These rules may be known and cited as the Chapter XI Rules. These forms may be known and cited as the Official Chapter XI Forms.

Notes of Advisory Committee on Rules

A "Chapter XI case," as defined in Rule 11-3, is one wherein a petition has been filed by a person seeking relief under Chapter XI of the Bankruptcy Act. The case includes all of the proceedings and matters which arise in connection with the case and of which the court of bankruptcy is given jurisdiction under Chapter XI and incorporated provisions of Chapters I-VII of the Act. See § 302. These rules and forms thus do not apply to a case initiated under Chapters I-VII of the Act unless a Chapter XI petition is filed in a pending bankruptcy case pursuant to Rule 11-7, nor to a case initiated under other debtor-relief chapters (VIII, IX, XII, XIII) or Chapter X unless an order is entered therein directing that the case proceed under Chapter XI. Nor do these rules prescribe except incidentally the practice for actions or "plenary proceedings" brought in state courts or federal district courts to determine controversies that arise in connection with a Chapter XI case.

"Courts of bankruptcy" are defined in § 1(10) of the Bankruptcy Act, 11 U.S.C. § 1(10), to "include the United States district courts and the district courts of the Territories and possessions to which this Act is or may hereafter be applicable." (References to the Bankruptcy Act hereinafter will be to the Act and will omit citations to Title 11 of the United States Code.) The courts of bankrupcyt clearly include the district courts of Guam and the Virgin Islands. 1 Collier, *Bankruptcy* ¶ 1.10 at 71-72 n. 22 (14th ed. rev. 1968), citing relevant statutory provisions. (Hereinafter citations to the Collier treatise will omit the title and references to the edition but will include the date of the revision of the cited material.) It is problematical whether the District Court for the District of the Canal Zone is a bankruptcy court, but it appears that the court has not undertaken to act as a court of bankruptcy. I Collier, *supra* at 72.

Rule 11-2. Meanings of Words in the Bankruptcy Rules When Applicable in a Chapter XI Case.

The following words and phrases used in the Bankruptcy Rules made applicable in Chapter XI cases by these rules have the meanings herein indicated, unless they are inconsistent with the context:

(1) "Bankrupt" means "debtor."

(2) "Bankruptcy" or 'bankruptcy case" means "Chapter XI case."

(3) "Receiver," "trustee," "receiver in bankruptcy," or "trustee in bankruptcy" means the "receiver," "trustee," or "debtor continued in possession" in the Chapter XI case.

Notes of Advisory Committee on Rules

These rules make many of the Bankruptcy Rules applicable in Chapter XI cases or in proceedings therein, and this rule indicates the substitution or translation of certain terms that is necessary for this purpose.

Rule 11-3. Commencement of Chapter XI Case.

(a) Method of Commencement.

A Chapter XI case is commenced by the filing of a petition with the court by a person seeking relief under Chapter XI of the Act.

(b) When Case May Be Commenced.

The petition under Chapter XI may be an original petition or it may be filed in a bankruptcy, Chapter XII, or Chapter XIII case.

Notes of Advisory Committee on Rules

This rule prescribes the mode for beginning a Chapter XI case, whether by filing an original petition or a petition in a pending bankruptcy case or a case pending under Chapter XII or XIII. Original petitions are governed by Rule 11-6 and petitions in pending bankruptcy cases by Rule 11-7 which are derived from §§ 321 and 322 of the Act. While § 321 refers only to the filing of a Chapter XI petition in a pending bankruptcy case, subdivision (b) of this rule makes explicit that the pending case may also be a Chapter XII or Chapter XIII case. If a Chapter X case were pending, Rule 10-117 of the Chapter X rules would apply to the conversion of the case to Chapter XI. A case may also proceed under Chapter XI pursuant to an order entered in a pending Chapter X case. A proceeding initiated by a petition or pursuant to an order in a Chapter X case is designated a "Chapter XI case" for the purposes of these rules. The term embraces all the controversies determinable by the court of bankruptcy and all the matters of administration arising during the pendency of the case. The word "proceeding" as used in these rules generally refers to a litigated matter arising within a case during the course of administration. See particularly Bankruptcy Rule 703, made applicable under Chapter XI by Rule 11-61. The rule assumes the continuing applicability of the definition of petition in § 306(5) of the Act but, as used in these rules, the word refers to the document commencing a Chapter XI case. The place of filing a petition is more fully particularized in Bankruptcy Rule 509.

Rule 11-4. Chapter XI Cases Originally Commenced Under Another Chapter of the Act.

When a case commenced under another chapter of the Act proceeds under Chapter XI, the Chapter XI case shall be deemed to have been originally commenced as of the date of the filing of the first petition initiating a case under the Act.

Notes of Advisory Committee on Rules

The purpose of this rule is to protect those rights that develop upon the filing of a petition commencing any case for relief under the Bankruptcy Act. The first case may have been a bankruptcy. Chapter XII or Chapter XIII case which was then transferred to Chapter XI by petition, or a Chapter X case which was transferred to Chapter XI by order. See Rules 11-3 and 11-7. This rule is not intended to invalidate any action taken in the superseded case before it was converted to a Chapter XI case.

Rule 11-5. Reference of Cases; Withdrawal of Reference and Assignment.

Bankruptcy Rule 102 applies in Chapter XI cases.

Notes of Advisory Committee on Rules

Bankruptcy Rule 102 contains a reference to Bankruptcy Rule 115(b) which, because it deals with involuntary petitions, is inapplicable in Chapter XI cases. That cross reference would, therefore, also be inapplicable.

Rule 11-6. Original Petition.

An original petition under Chapter XI of the Act shall conform substantially to Official Form No. 11-F1. An original and 4 copies of the petition shall be filed, unless a different number of copies is required by local rule. The clerk shall transmit one copy to the District Director of Internal Revenue for the district in which the case is filed, and one copy to the Secretary of the Treasury and, if the debtor is a corporation, one copy to the Securities and Exchange Commission at Washington, District of Columbia.

Notes of Advisory Committee on Rules

Official Form No. 11-F1 (Original Petition under Chapter XI) has been simplified and shortened but retains the essential features of the official form for a debtor's petition promulgated under former § 30 of the Act. Although no copy of this petition is required to be served on any adverse party, the rule continues the requirement of § 59c of the Act that three copies be filed for court purposes although the petition need not be filed in triplicate original. The rule incorporates the requirements of § 394 and General Order 48(3) with respect to transmitttal of copies of the petition to the Secretary of the Treasury and the District Director of Internal Revenue. If the debtor is a corporation a copy of the petition must also be sent to the Securities and Exchange Commission Attached to Official Forms Nos. 11-F1 and 11-F2 is Exhibit "A" which contains information needed by the SEC at the beginning stages of a Chapter XI case of a corporate debtor. Additionally, note should be taken of local rules to determine whether or not any additional copies must be filed.

As provided in Rule 11-44, the filing of the petition acts as a stay of other proceedings against the debtor, except a pending Chapter X case.

Only the original need be signed and verified, but the copies must be conformed to the original. See Bankruptcy Rule 911(c). The petition must be filed with the clerk as provided in Bankruptcy Rule 509(a).

Rule 11-7. Petition in Pending Case.

If a bankruptcy case or a case under Chapter XII or XIII is pending by or against the debtor, any petition under Chapter XI shall be filed therein and may be filed before or after adjudication. Such petition shall conform substantially to Official Form No. 11-F2. The number and distribution of copies shall be as specified in Rule 11-6. The filing of the petition shall act as a stay of adjudication and of administration of an estate in bankruptcy. The court may, for cause shown, terminate, annul, modify, or condition the stay.

Notes of Advisory Committee on Rules

Official Form No. 11-F2 (Chapter XI Petition in Pending Case) is new. It is designed for use where a bankruptcy case or a case under Chapter XII or XIII is pending on a petition by or against the debtor and must be filed with the court in which the other case is pending. See Rule 11-13(a). Although no copy of the petition is required to be served on any adverse party, the rule continues the requirement of § 59c of the Act that the court have 3 copies of the petition. See Rule 11-6.

Although Bankruptcy Rule 509 specifies that the petition is to be filed with the clerk, the petition under this rule in a pending case should be filed with the referee because it is being filed after reference. The court should transmit the copies of the petition as provided in Rule 11-6.

The rule changes the thrust of § 325 of the Act by staying automatically the adjudication or administration of the estate in a bankruptcy case rather than rendering it discretionary with the court to order a stay. This stay does not operate to impede the administration of a pending Chapter XII or XIII case. A specific order to that effect could, however, be entered. The stay of administration referred to in this rule is the administration of a straight bankruptcy case under Chapters I-VII of the Act. As provided in Rule 11-44 the filing of the petition also acts as a stay of most other proceedings against the petitioner. For cause shown, however, the automatic stay may be terminated, modified, etc. as may be necessary in a particular case, and some actions in the pending case may be permitted, such as sale of property where it would be improvident to halt the sale by the mere filing of the Chapter XI petition.

Only the original need be signed and verified, but the copies must be conformed to the original. See Bankruptcy Rule 911(c).

Rule 11-8. Partnership Petition.

A petition may be filed pursuant to Rule 11-6 or 11-7 by all the general partners on behalf of the partnership.

Notes of Advisory Committee on Rules

A partnership as such is a debtor capable of being bankrupt under § 4 of the Act and thus is entitled to the benefit of Chapter XI pursuant to § 306(3). There is some question within the Act whether or not a partnership petition may pronerly be filed by less than all of the general partners. Under § 5 of the Act and Bankruptcy Rule 105 a petition commencing a bankruptcy case may be filed by less than all of the general partners. This procedure, however, is more akin to an involuntary petition, requiring service of the petition on nonassenting partners and a hearing on adjudication, which is inconsistent wtih the voluntary nature of a Chapter XI case for arrangement. This rule requires a petition on behalf of a partnership to be filed by all of the general partners. This does not mean, necessarily, that all of the general partners physically execute the petition. While all must consent to the petition, less than all may execute the petition which would be on behalf of all. See 8 Collier, ¶ 4.02[4.3] (1963).

Rule 11-9. Caption of Petition.

Bankruptcy Rule 106 applies in Chapter XI cases.

NOTES OF ADVISORY COMMITTEE ON RULES

The last sentence of Bankruptcy Rule 106 has reference to involuntary petitions and would therefore not be applicable in a Chapter XI case.

Rule 11-10. Filing Fees.

Every petition filed pursuant to Rule 11-6 shall be accompanied by the prescribed filing fees.

NOTES OF ADVISORY COMMITTEE ON RULES

Filing fees for Chapter XI cases are prescribed by § 324 (2) which incorporates §§ 40c(1), 48c and 52a of the Act. Additional fees and charges may be prescribed in accordance with schedules and regulations approved by the Judicial Conference of the United States pursuant to §§ 40c (2) and (3) of the Act and 28 U.S.C. § 1914(b). If the original petition commenced a Chapter XIII case, an additional filing fee would be required to be paid with the Chapter XI petition.

Rule 11-11. Schedules, Statement of Affairs, and Statement of Executory Contracts.

(a) Schedules and Statements required.

The debtor shall file with the court schedules of all his debts and all his property, a statement of his affairs, and a statement of his executory contracts, prepared by him in the manner prescribed by Official Forms No. 11-F5 and either No. 11-F6 or No. 11-F7, whichever is appropriate. The number of copies of the schedules and statements shall correspond to the number of copies of the petition required by these rules.

(b) Time Limits.

Except as otherwise provided herein, the schedules and statements, if not previously filed in a pending bankruptcy or Chapter XII case, shall be filed with the petition. A petition shall nevertheless be accepted by the clerk if accompanied by a list of all the debtor's creditors and their addresses, and the schedules and statements may be filed within 15 days thereafter in such case. On application, the court may grant up to 30 additional days for the filing of schedules and the statements; any further extension may be granted only for cause shown and on such notice as the court may direct.

(c) Partnership.

If the debtor is a partnership, the general partners shall prepare and file the schedules of the debts and property, statement of affairs, and statement of executory contracts of the partnership.

(d) Interests Acquired or Arising After Petition.

Bankruptcy Rule 108(e) applies in Chapter XI cases except that the supplemental schedule need not be filed with respect to property or interests acquired after confirmation of a plan.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (a): This rule is an elaboration of § 7a(8) and (9) and § 324(1) of the Act. This list of creditors has been referred to in Schedule A of Official Form 11-F5 as the schedule of debts, and the latter designation is employed in the rules and official form as revised. Section 324 has required the schedules of property, list of creditors and statements to be filed in triplicate, and § 59c of the Act has required petitions to be filed in the same number. Rules 11-6 and 11-7 require petitions to be filed in an original and 4 copies. Each required copy of a petition must be accompanied by a copy of schedules, statement of affairs and statement of executory contracts except as provided in subdivision (b). Only the original need be signed and varified, but the copies should be conformed to the original. See Bankruptcy Rule 911(c).

Subdivision (b) retains the requirement of § 324(1) that the schedules, statement of affairs and statement of executory contracts accompany a petition filed under Rule 11-6 unless a list of creditors and their addresses accompanies the petition. If the Chapter XI petition is filed under Rule 11-7 and schedules, and statement of affairs have already been filed in a pending bankruptcy case on Official Forms No. 6 and 7 or 8, or on Official Forms No. 12-F5 and 12-F6 or 12-F7 in a pending Chapter XII case, they need not be refiled on Official Forms No. 11-F5 and 11-F6 or 11-F7; however, the statement of executory contracts must, unless previously filed in a Chapter XII case, be filed but no Official Form is provided.

Whereas the option to file with the petition a list of creditors with their addresses is available to the debtor under § 324(1) only if he also files a summary assets and liabilities and if the court files for cause shown gives him further time for filing the schedules and statements, the rule allows the debtor 15 more days for filing the schedules and statement without the necessity of applying for and obtaining an extension of time from the court. A debtor frequently has an urgent need for relief available under Chapter XI of the Act, and allowing him up to 15 days in which to provide the information required on the schedules and in the statements will be less productive of administrative inconvenience and delay than the present requirement of an application for extension of time. Extensions of time beyond the 15-day period allowed by the second sentence of subdivision (b) are governed by the last sentence of the subdivilson and by Bankruptcy Rule 906(b). An extension for up to 30 days may be granted on application to the court, but any further extension may be made only cause shown and after notice as the court may direct.

Subdivision (c), prescribing who shall prepare and file schedules and the statements wherever a debtor is a partnership is new. While the duty to prepare the schedules and the statements of a partnership attaches to all the general partners, one partner may sign these papers on behalf of the partnership. See, *e.g.*, the form of the oath on behalf of a partnership at the foot of Official Farm No. 6.

Subdivision (d), which is new, provides a procedure for getting information as to post-petition acquisitions of the debtor prior to confirmation of a plan. This subdivision contemplates that the original schedules and statements will be complete and accurate as of the time of the filing of a petition in bankruptcy or under Chapter XII where a petition is filed under Rule 11-7. If that is not the case, they should be corrected by amendment pursuant to Rule 11-12 rather than by the filing of supplemental schedules and statement of affairs pursuant to this rule.

The reference to "bankruptcy" or "date of bankruptcy" in Bankruptcy Rule 108(e) means the date of the initial petition instituting a case under the Act. The plan or order of confirmation may require the filing of a supplemental schedule if property or interests are acquired before a later date fixed for the revesting of title in the debtor or vesting of title in some other person.

If the case is converted to bankruptcy, the requirements of subdivision (d) will no longer apply, but the requirements of subdivision (e) of Bankruptcy Rule 11-108 as to reporting post-petition property acquisitions will become applicable.

Rule 11-12. Verification and Amendment of Petition and Accompanying Papers.

Bankruptcy Rules 109 and 110 apply in Chapter XI cases to petitions, schedules, statements of affairs, statements of executory contracts, and amendments thereto.

NOTES OF ADVISORY COMMITTEE ON RULES

Bankruptcy Rules 109 and 110 do not include statements of executory contracts because only schedules and statements of affairs are filed in bankruptcy cases under Bankruptcy Rule 108. In Chapter XI cases, however, a statement of executory contracts is required by Rule 11-11 and thus the rules on verification and amendment apply equally to such a statement.

See also Bankruptcy Rule 911(c) requiring that the original be executed and verified and the copies conformed to the original.

Rule 11-13. Venue and Transfer.

(a) Proper Venue.

(*1*) *General Venue Requirement.* Bankruptcy Rule 116(a)(1) and (2) apply to a petition filed pursuant to Rule 11-6. A petition filed pursuant to Rule 11-7 shall be filed with the court in which the bankruptcy, Chapter XII, or Chapter XIII case is pending.

(*2*) *Partner with Partnership or Copartner.* Notwithstanding the foregoing: (A) a petition commencing a Chapter XI case may be filed by a general partner in a district where a petition under the Act by or against a partnership is pending; (B) a petition commencing a Chapter XI case may be filed by a partnership or by any other general partner or any combination of the partnership and the general partners in a district where a petition under the Act by or against a general partner is pending.

(*3*) *Affiliate.* Notwithstanding the foregoing, a petition commencing a Chapter XI case may be filed by an affiliate of a debtor or bankruptcy in a district where a petition under the Act by or against the debtor or bankrupt is pending.

(b) Transfer of Cases: Dismissal or Retention When Venue Improper; Reference of Transferred Cases.

Bankruptcy Rule 116(b) and (d) apply in Chapter XI cases.

(c) Procedure When Petitions Involving the Same Debtor or Related Debtors Are Filed in Different Courts.

Bankruptcy Rule 116(c) applies in Chapter XI cases.

Notes of Advisory Committee on Rules

Paragraph (2) of subdivision (a) incorporates and extends the principle embodied in § 5d of the Act. Like § 2a(1), § 5d has served primarily as a venue provision though couched in jurisdictional terms. See 1 Collier, ¶ 2.17 [1] (1968). Paragraph (3) goes beyond § 5d by permitting a petition to be filed by a partner or partnership in a district because of the pendency there of a case which may not have been filed in accordance with the provisions of paragraph (1) or (2) of the subdivision that prescribe proper venue for such a case. The procedure for effecting a transfer of both cases, if in the interest of justice and for the convenience of the parties, is provided in subdivision (b), Rule 11-14 authorizes joint administration of partnership and partners' estates under appropriate circumstances.

Paragraph (3) of subdivision (a) is derived from but goes considerably beyond § 129 of the Act, which authorizes a petition by or against a subsidiary to be filed in a court which has approved a Chapter X petition by or against its parent corporation. An affiliate is defined in Bankruptcy Rule 901(3) to include a subsidiary as defined in Chapter X of the Act (§ 106(13)), a parent corporation, and a variety of persons having connections different from those contemplated by §§ 106(13) and 129 of the Act. Joint administration of the estates of affiliates may be authorized under Rule 11-14.

Rule 11-14. Joint Administration of Cases Pending in Same Court.

Bankruptcy Rule 117(b) and (c) apply in Chapter XI cases.

Notes of Advisory Committee on Rules

This rule recognizes the appropriateness of joint administration in cases where petitions concerning related debtors are pending. Subdivision (a) of Bankruptcy Rule 117 dealing with consolidation of cases involving the same bankrupt is inapplicable in Chapter XI cases. The Chapter XI petition being voluntary, there would not be 2 Chapter XI cases involving the same debtor.

The authority of the court to order a joint administration under this rule extends to the situation where cases are pending in the same court by virtue of an order from another court pursuant to Rule 11-13.

Rule 11-15. Conversion to Chapter X.

(a) Motion by Debtor.

A debtor eligible for relief under Chapter X of the Act may, at any time, make a motion to have the case proceed under such Chapter.

(b) Motion by Party in Interest Other Than Debtor.

At any time until 120 days after the first date set for the first meeting of creditors in the Chapter XI case, a motion may be made by the Securities and Exchange Commission or other party in interest to have the case proceed under Chapter X of the Act. The court may, for cause shown, extend the time for making such motion.

(c) Form of Motion; Answer.

A motion made under this rule shall state why relief under Chapter XI of the Act would not be adequate and shall also conform substantially to Official Form No. 10-1. On the making of such motion, the court shall fix a date on at least 20 days' notice to the parties specified in subdivision (d) of this rule for the filing of answers controverting the allegations of the motion, which date shall be not less than 10 days before the date set for the hearing under subdivision (d) of this rule.

(d) Hearing and Order.

After hearing, on notice to the debtor, the Securities and Exchange Commission, indenture trustees, creditors, and stockholders, and such other persons as the court may direct, the court shall, if it finds that the case may properly proceed under Chapter X of the Act, grant the motion and order that the case proceed under that Chapter. The granting of the motion shall be deemed to constitute approval of a petition under Chapter X.

Notes of Advisory Committee on Rules

This rule is derived from § 328 of the Act with several changes. Under § 328 an application is filed with the district judge but this rule contemplates that the matter will be heard and decided by the bankruptcy judge. The rule provides, in subdivision (b), a time limit within which a motion to transfer may be made by any party in interest although the court may extend the time for cause. A motion made by the debtor may be made at any time. The rule, as distinguished from § 328, requires a transfer to Chapter X if the court finds after hearing upon notice that the case should have been brought under Chapter X. Section 328 would permit a dismissal if a voluntary or involuntary petition under Chapter X were not filed. Thus, it would be possible, under § 328, that after such a finding the corporate debtor would not be subject to any supervisory control where its financial problems have probably increased substantially.

A Chapter X petition is subject to approval by the court and one of the grounds for denying such approval is that adequate relief can be obtained under Chapter XI. The rule thus requires that any motion made thereunder must allege that such relief is not obtainable under Chapter XI. Additionally, the motion must allege that the requirements for approval of a voluntary Chapter X petition have been met in order for the court to be able to make the finding that the case should have been brought under Chapter X. An answer to the motion may deny the existence of one or more of such requirements. The motion should conform substantially to Official Form No. 10–1 of the Chapter X Forms. This is the form that incorporates the provisions of § 130 of the Act which specify the allegations necessary for a voluntary Chapter X petition.

The effect of the court's order under this rule, if it finds that the case should have been brought under Chapter X, is to have the case proceed thereunder. There would not be the necessity of another hearing on an amended petition or th like. Accordingly, the motion is treated similar to an amended petition which § 328 contemplated and parties must be afforded an opportunity to contest the motion and a hearing on notice must be provided. With the opportunity to file answers, and to have a hearing on notice, the bankruptcy judge can at one time decide the material issues and obviate the necessity for two separate hearings on the same matters. Answers may not be filed thereafter by any party. Approval of the motion is deemed to be the same as approval of a Chapter X petition so that relevant consequences and time periods related to approval will be the same.

When a case proceeds under Chapter X pursuant to an order entered under this rule, the continuation of relevant time periods dating from the filing of the first petition is provided for in the Chapter X rules.

Rule 11–16. Death or Insanity of Debtor.

In the event of death or insanity of the debtor, a Chapter XI case may be dismissed, or if further administration is feasible and in the best interest of the parties, the estate may be administered and the case concluded in the same manner, so far as possible, as though the death or insanity had not occurred.

Notes of Advisory Committee on Rules

This rule is an adaptation of § 8 of the Act. If administration continues, it may thereafter be dismissed or converted to bankruptcy for any of the causes any other Chapter XI case may be dismissed or converted to bankruptcy.

Rule 11–17. Debtor Involved in Foreign Proceeding.

Bankruptcy Rule 119 applies in Chapter XI cases.

Rule 11–18. Appointment of Receiver; Continuance of Trustee or Debtor in Possession; Removal.

(a) Trustee.

When a petition is filed under Rule 11–7 after the qualification of a trustee in bankruptcy in the pending bankruptcy case, the court shall continue the trustee in possession.

(b) Retention of Debtor in Possession; Appointment of Receiver.

On the filing of a petition under Rule 11–6 or 11–7, if no trustee in bankruptcy has previously qualified, the debtor shall continue in possession. On application of any party in interest, the court may, for cause shown, appoint a receiver to take charge of the property and operate the business of the debtor.

(c) Notice to Receiver of His Appointment; Qualification.

The court shall immediately notify the receiver of his appointment, inform him as to how he may qualify, and require him forthwith to notify the court of his acceptance or rejection of the office. A receiver shall qualify as provided in Rule 11–20.

(d) Eligibility.

Only a person who is eligible to be a trustee under Bankruptcy Rule 209(d) may be appointed a receiver.

(e) Removal and Substitution of Receiver.

The court may at any time remove the receiver and either a successor or restore the debtor to possession.

(f) Removal of Trustee for Cause.

On motion of any party in interest or on the court's own initiative and after hearing on notice, the court may remove a trustee for cause and either appoint a receiver or designate the debtor as debtor in possession.

(g) Substitution of Successor.

When a trustee or receiver dies, resigns, is removed or otherwise ceases to hold office during the pendency of a Chapter XI case, his successor is automatically substituted as a party in any pending action, proceeding, or matter without abatement.

Notes of Advisory Committee on Rules

Subdivisions (*a*) *and* (*b*) of this rule are derived from § 332 of the Act. That section requires retention of a trustee in bankruptcy if one was previously elected or appointed in a pending bankruptcy case but subdivision (a) renders his "qualification" the operative element. The qualification of a trustee in bankruptcy is governed by Bankruptcy Rule 209. A *trustee* is never appointed or elected in a Chapter XI case except where one is already in office because of the pendency of the bankruptcy case. In a Chapter XI case, the creditors may elect a standby trustee, pursuant to Rule 11–27 but he only takes office if the Chapter XI case is subsequently converted to a bankruptcy case. In the absence of a bankruptcy trustee the proper chapter officer is either the debtor in possession or, when necessary, a receiver. When there is no bankruptcy trustee, the court should continue the debtor in possession unless there is some reason for the appointment of a receiver. A receiver must qualify as provided in subdivision (c) of this rule and Rule 11–20 which is comparable to Bankruptcy Rule 212.

Rule 11–21 continues the policy of the Act of June 7, 1934, 48 Stat. 923, against undue concentration of appointments of trustees and receivers, and Bankruptcy Rule 505 contains safeguards against nepotism and undue influence in such appointments. Bankruptcy Rule 503 incorporates the disqualification by § 39b(2) of the Act, of a referee to act as receiver in any case.

Rule 11–19. Receivers for Estates When Joint Administration Ordered.

(a) Appointment of Receivers for Estates Being Jointly Administered.

If the court orders a point administration of 2 or more estates pursuant to Rule 11–14, it may appoint one or more common receivers or separate receivers for the estates being jointly administered. Common receivers shall not be appointed unless the court is satisfied that parties in interest in the different estates will not be prejudiced by conflicts of interest of such receivers.

(b) Separate Accounts.

The receiver or receivers of estates being jointly administered shall nevertheless keep separate accounts of the property of each estate.

Notes of Advisory Committee on Rules

This rule recognizes that economical and expeditious administration of 2 or more estates may be facilitated by the selection of a single receiver whenever estates are being jointly administered pursuant to Rule 11–14. If, after the appointment of a common receiver a conflict of interest materializes, the court must take special and appropriate action to deal with such conflict.

Subdivision (*b*) is derived from § 5e of the Act and extends the duty of keeping a separate account for each estate to receivers in all cases of joint administration.

Rule 11-20. Qualification by Receiver and Disbursing Agent; Indemnity; Bonds; Evidence.

(a) Qualifying Bond or Security.

Except as provided hereinafter, every receiver within 5 days after his appointment and every person specially appointed as disbursing agent within the time fixed by the court shall, before entering on the performance of his official duties, qualify by filing a bond in favor of the United States conditioned on the faithful performance of his official duties or by giving such other security as may be approved by the court.

(b) Blanket Bond.

The court may authorize a blanket bond in favor of the United States condiitoned on the faithful performance of official duties by a receiver in more than one case or by more than one receiver.

(c) Qualification by Filing Acceptance.

A receiver for whom a blanket bond has been filed pursuant to subdivision (b) of this rule shall qualify by filing his acceptance of his appointment in lieu of the bond.

(d) Indemnification.

The court may, after hearing on notice to the debtor and such other persons as the court may direct, order the debtor to indemnify or otherwise protect the estate against subsequent loss thereto or diminution thereof until the entry, if any, of an order of adjudication.

(e) Amount of Bond and Sufficiency of Surety; Filing of Bond; Proceeding on Bond.

Bankruptcy Rule 212 (e) and (f) apply to the bonds of trustees, receivers, and persons specially appointed as disbursing agents in Chapter XI cases.

(f) Evidence of Qualification; Debtor Continued in Possession.

A certified copy of the order approving the bond or other security given by a receiver under subdivision (a) or of his acceptance filed under subdivision (c) of this rule shall constitute conclusive evidence of his appointment and qualification. Whenever evidence is required that a debtor is a debtor in possession, the court may so certify and the certificate shall constitute conclusive evidence of that fact.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (*a*) of this rule is based on §§ 50b and 337 of the Act but recognizes that security other than a bond may be given by a receiver as a mode of qualifying under the rule.

Subdivision (*b*), which is new, gives explicit authority for approval by the court of a single bond to cover (1) a person who qualifies as receiver in a number of cases, and (2) a number of receivers each of whom qualifies in a different case. The cases need not be related in any way. Substantial economies can be effected if a single bond covering a number of different cases can be issued and approved at one time. When a blanket bond is filed the receiver qualifies under subdivision (c) of the rule by filing an acceptance of the office.

Subdivision (*d*) is derived from § 326 of the Act and refers to indemnification rather than faithful performance as under subdivision (a). Loss to the estate may be protected against in ways other than filing an indemnifying bond as, for example, the officer or officers foregoing compensation for a period of time and subdivision (d) recognizes such possibilities. This subdivision is broader in scope than § 326 in that indemnification can be required in all cases. Under § 326, indemnification is limited to cases commenced by the filing of an original petition pursuant to § 322.

Subdivision (*f*) is a revision of § 21e of the Act to prescribe the evidentiary effect of a certified copy of an order approving any security given by a trustee or receiver under this rule or, a certificate that the debtor has been retained in possession. The order of approval should conform substantially to Official Form No. 11-F11. A certificate that the debtor has been retained in possession should conform substantially to Official Form No. 11-F12. Copies of such certificates are not within § 21g of the Act; in such a case a certified copy of the petition may be recorded pursuant to § 21g.

Rule 11-21. Limitation on Appointment of Receivers.

Bankruptcy Rule 213 applies in Chapter XI cases.

Rule 11-22. Employment of Attorneys and Accountants.

Bankruptcy Rule 215 applies in Chapter XI cases to the employment of attorneys and accountants for a trustee, receiver, debtor in possession, or creditors' committee selected pursuant to Rule 11-27.

NOTES OF ADVISORY COMMITTEE ON RULES

Under Bankruptcy Rule 215 a court order on application is necessary for the appointment of an attorney or accountant for a trustee or receiver. The same is true in a Chapter XI case. Additionally, an official creditors' committee should apply to the court for the employment by it of an attorney or accountant. Such attorney or accountant will be compensated from the estate; accordingly there should be some supervision by the court over the original employment.

Rule 11-23. Authorization of Trustee, Receiver, or Debtor in Possession To Conduct Business of Debtor.

The court may authorize the trustee, receiver, or debtor in possession to conduct the business and manage the property of the debtor for such time and on such conditions as may be in the best interest of the estate.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is derived from § 343 of the Act. Continuation of the buiness represents the norm in Chapter XI cases as distinguished from a liquidation of an estate as is usually contemplated in bankruptcy cases. The trustee referred to in the rule is a trustee who had been a trustee in bankruptcy if the Chapter XI case was filed in a pending bankruptcy case.

The conditions which may be imposed by the court include the posting of an indemnification bond pursuant to Rule 11-20.

Rule 11-24. Notice to Parties in Interest and the United States.

(a) Ten-Day Notices to Parties in Interest.

Except as provided hereinafter, the court shall give the trustee or receiver, the debtor, and all creditors, including secured creditors, at least 10 days' notice by mail of (1) a meeting of creditors; (2) any proposed sale of property, other than in the ordinary course of business, including the time and place of any public sale, unless the court on cause shown shortens the time or orders a sale without notice; (3) the hearing on the approval of a compromise or settlement of a controversy, unless the court on cause shown directs that notice not be sent; (4) the time for filing objections to confirmation; (5) the hearing to consider confirmation of a plan; (6) the time fixed to reject a proposed modification of a plan when notice is required by Rule 11-39; and (7) the hearing on an application for allowances for compensation or reimbursement of expenses. The notice of a proposed sale of property, including real estate, is sufficient if it generally describes the property to be sold. The notice of a hearing on an application for compensation or reimbursement of expenses shall specify the applicant and the amount requested.

(b) Other Notices to Parties in Interest.

The court shall give notice by mail to the trustee or receiver, the debtor, and all creditors, including secured creditors, of (1) dismissal of the case pursuant to Rule 11-42; (2) the time allowed for filing a complaint to determine the dischargeability of a debt pursuant to § 17c(2) of the Act as provided in Rule 11-48; and (3) entry of an order confirming a plan pursuant to Rule 11-38.

(c) Addresses of Notices.

Bankruptcy Rule 203(e) applies in Chapter XI cases.

(d) Notices to Creditors' Committee.

Copies of all notices required to be mailed to creditors under these rules shall be mailed to the creditors' committee selected pursuant to Rule 11-29, if any. Notwithstanding the foregoing subdivisions, if a creditors' committee has been selected, the court may order that notices required by clauses (2), (3), and (7) of subdivision (a) be mailed only to the committee or to its authorized agent and to the creditors who file with the court a request that all notices under these clauses be mailed to them.

(e) Notices to the United States.

Copies of all notices required to be mailed to creditors under these rules shall be mailed to the United States in the manner provided in Bankruptcy Rule 203(g).

(f) Notice by Publication.

Bankruptcy Rule 203(h) applies in Chapter XI cases.

(g) Caption.

The caption of every notice given under this rule shall comply with Rule 11-9.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule collects the provisions for notices specifically applicable to parties in interest in Chapter XI cases, but reference must be made to other rules for the time and manner in which the notices required by subdivision (b) shall be given. The grant of general authority to the court to regulate notices in Bankruptcy Rule 907 supplements but is subject to the specific provisions of Rule 11-24 and any other rule prescribing the terms of notice.

Subdivision (a) requires that parties in interest get 10-day notices by mail of the significant events in a Chapter XI case, including creditors' meetings. Since notice by mail is complete on mailing, the requirement of this subdivision is satisfied if the notices it prescribes are deposited in the mail at least 10 days before the event of which notice is to be given, regardless of when the notice is received. See Bankruptcy Rule 906(e); 3 Collier 494 (1971).

The time limits prescribed by subdivision (a) cannot be reduced except to the extent and under the conditions stated in this rule. *Cf.* Bankruptcy Rule 906(c). The exceptions referred to by the introductory phrase of subdivision (a) include the modifications in the notice procedure permitted by subdivision (d) as to creditors who have elected a committee to represent them, and by subdivision (f) when compliance with subdivision (a) is impracticable.

Subdivision (c) recognizes that an agent authorized to receive notices for a creditor may, without a court order, designate how notices to the creditor he represents should be addressed. Such an agent includes an officer of a corporation, an attorney at law, or attorney in fact if the requisite authority has been given him. It should be noted that Official Form No. 11-F16 does not include an authorization of the holder of a power of attorney to receive notices for the creditor, but neither the form nor this rule carries any implication that such an authorization may not be given in a power of attorney or that a request for notices to be addressed to both the creditor and his duly authorized agent may not be filed.

Subdivision (d) requires that all notices sent to creditors should also be sent to the official creditor's committee, that is, the committee elected under Rule 11-29, if any such committee has been elected. The second sentence of this subdivision regulates those situations where certain notices can be sent only to the elected committee in place of sending them to all creditors.

Subdivision (e) is a revision of § 394 of the Act. The premise of the requirement that the district director of internal revenue receive all notices that creditors receive under subdivisions (a) and (b), is that every debtor is at least potentially a tax debtor of the United States. Notice to the district director alerts him to the possibility that a tax debtor's estate is undergoing arrangement. Where other indebtedness to the Federal government is indicated in the schedule, the United States Attorney or appropriate agency, etc., is to receive the various notices. This rule is not intended to preclude a local rule from requiring a state or local tax authority to receive some or all of the notices creditors are entitled to receive under subdivisions (a) and (b).

Subdivision (f) specifies two kinds of situations in which notice by publication may be appropriate: (1) when notice by mail is impracticable; and (2) when notice by mail alone is less than adequate. Supplementation of notice by mail is indicated when the debtor's records are incomplete or inaccurate and it is reasonable to believe that publication may reach some of the creditors who would otherwise be missed. Bankruptcy Rule 908 applies when the court directs notice by publication under this rule.

As noted in connection with Rule 11-9, the disclosure requirement in subdivision (g) of this rule follows the practice established in some districts by local rule. Inclusion in notices to creditors of information as to other names used by the debtor will assist them in the preparation of their proofs of claim.

The provisions of § 58c of the Act, requiring notices to be given by the referee unless otherwise ordered by the judge and authorizing written waiver of any notice required by the Act, have been omitted from the Rule as unnecessary. This duty may be delegated to an assistant or any employee in the clerk's office as provided in Bankruptcy Rule 506. Bankruptcy Rule 907 authorizes the court to prescribe the manner in which any other notice is to be given under the rules. These rules pose no obstacle to the court's giving notice by mail deposited at the location of a national or regional computer center on the basis of information supplied the center by the court. Waiver of notice may be by conduct as well as in writing, and its effect may be appropriately left to case law. See, *e.g., Connelly* v. *Hancock, Door, Ryan & Shove,* 195 F. 2d 864, 868-69 (2d Cir. 1962); *In re Purrier,* 73 F. Supp. 418, 420 (W.D. Wash. 1947).

Pursuant to express inclusion, secured creditors are entitled to the notices sent to creditors under this rule. Thus, secured creditors will receive notice of the pendency of the case and of the stay against lien enforcement provided for by Rule 11-44.

Rule 11-25. Meetings of Creditors.

(a) First Meeting.

(1) *Date and Place.* The first meeting of creditors shall be held not less than 20 nor more than 40

days after the filing of a petition commencing a Chapter XI case but if there is an application or motion to dismiss or to covert to bankruptcy pursuant to Rule 11-42 or an appeal from or a motion to vacate an order entered under that rule, the court may delay fixing a date for such meeting. The meeting may be held at a regular place for holding court or at any other place within the district more convenient for the parties in interest.

(2) *Agenda.* The bankruptcy judge shall preside over the transaction of all business at the first meeting of creditors, including the examination of the debtor. He shall, when necessary, determine which claims are unsecured and which are secured and to what extent, which claims are entitled to vote at the meeting, which claims have voted for acceptance of a plan, shall conduct the election, if one is held, of a standby trustee and, if one is held, of a creditors' committee, and may fix a time for filing a plan if one has not been filed.

(b) Special Meetings.

The court may call a special meeting of creditors on application or on its own initiative.

Notes of Advisory Committee on Rules

Subdivision (a) is derived from § 334 of the Act and the time for holding the first meeting of creditors runs from the filing of the petition. Paragraph (2) of this subdivision incorporates the provisions of §§ 336 and 337(3) of the Act. This paragraph adds to the agenda the determination of which claims are secured and unsecured. Although a plan may not deal with secured claims it may be necessary to determine whether a purportedly secured claim is partially unsecured as contemplated by Rules 11-33, 11-36 and 11-37.

The first meeting of creditors by definition includes any adjourned meetings. The standby trustee referred to is one who may take office only if the Chapter XI case is subsequently converted to a bankruptcy case. There is no election of a trustee to administer the Chapter XI case or estate. The proper chapter officer is either the debtor in possession or, when necessary, a receiver. The only time there could be a trustee is if the Chapter XI case was filed in a pending bankruptcy case after a trustee in bankruptcy had qualified. That trustee would then continue as trustee in the Chapter XI case.

Subdivision (b) is derived from § 55d of the Act and Bankruptcy Rule 204(b) vesting general authority in the referee to call a special meeting when necessary.

No provision is made for a final meeting of creditors.

Rule 11-26. Examination.

Bankruptcy Rule 205 applies in Chapter XI cases, except that the scope of examination referred to in subdivision (d) thereof may also relate to the liabilities and financial condition of the debtor, the operation of his business and the desirability of the continuance thereof, the source of any money or property acquired or to be acquired by the debtor for purposes of consummating a plan and the consideration given or offered therefor, and any other matter relevant to the case or to the formulation of a plan.

Notes of Advisory Committee on Rules

This rule adds, as within the scope of the examination, inquiries concerning the means with which the debtor proposes to carry out the provisions of his proposed plan and any promises or transfers used to obtain such mean from third parties. In determining whether to accept or reject a plan, creditors should have all relevant information placed before them; similarly, the court requires the pertinent data to determine whether a proposed plan is in the best interest of creditors and is feasible.

Rule 11-27. Selection of Creditors' Committee and Standby Trustee.

(a) Election or Appointment of Creditors' Committee and Election of Standby Trustee.

At the first meeting of creditors, creditors may elect a committee of not less than 3 nor more than 11 creditors if none has previously been elected under Bankruptcy Rule 214 and, if a trustee has not previously been elected or appointed, may elect a standby trustee. If creditors fail to elect a committee and if it is in the best interest of the estate, the court may appoint a representative committee from among creditors willing to serve.

(b) Voting at Creditors' Meetings.

Bankruptcy Rule 207 applies in Chapter XI cases to the voting at creditors' meetings for a standby trustee and a creditors' committee.

Notes of Advisory Committee on Rules

Only two items are voted on by creditors at the first meeting: the election of a standby trustee and the election of a creditors' committee. The nominated standby trustee, if any, does not function during the pendency of the Chapter XI case. As the title indicates, his is a provisional nomination or election. It is only when the Chapter XI case is converted to bankruptcy that he proceeds to qualify (see Bankruptcy Rule 122), take office, and administer the ensuing bankruptcy estate. In Chapter XI, the only proper officers are a previously elected and qualified trustee in a pending bankruptcy case or, if none, a receiver appointed by the court or the debtor in possession. Since these rules contemplate retention of the debtor in possession, the existence of a creditor's committee may be important. When necessary and in the best interest of the estate, the court may appoint one if creditors fail to elect. This provision is new.

Rule 11-28. Solicitation and Voting of Proxies.

Bankruptcy Rule 208 applies in Chapter XI cases, except that the rule does not apply to the solicitation of the acceptance of a plan, or to the related proof of claim that does not contain a proxy, and except that for the purpose of this rule "$500" in Bankruptcy Rule 208(b)(1)(C) is changed to "$1,000."

Notes of Advisory Committee on Rules

The first exception in this rule is to recognize and continue the practice in Chapter XI cases permitting solicitation of acceptances and related proofs of claim, usually by the debtor and quite often before the filing of the petition.

The second exception is to make less restrictive an authorized solicitation by a creditors' committee in Chapter XI cases, recognizing that in these cases there will be, ordinarily, more claims of a higher dollar value.

Rule 11-29. Creditors' Committee.

(a) Functions.

The committee selected pursuant to Rule 11-27 may consult with the trustee, receiver, or debtor in possession in connection with the administration of the estate, examine into the conduct of the debtor's affairs and the causes of his insolvency or inability to pay his debts as they mature, consider whether the proposed plan is for the best interests of creditors and is feasible, negotiate with the debtor concerning the terms of the proposed plan, advise the creditors of its recommendations with respect to the proposed plan, report to the creditors concerning the progress of the case, collect and file with the court acceptances of the proposed plan, and perform such other services as may be in the interest of creditors.

(b) Employment of Attorneys, Accountants, and Agents.

A committee selected pursuant to Rule 11-27 may employ such attorneys, accountants, and other agents as may be necessary to assist in the performance of its functions.

(c) Reimbursement of Expenses; Compensation.

Expenses of the committee, including compensation for attorneys, accounts, and other agents employed under subdivision (b) of this rule, whether incurred before or after the filing of the petition, shall be allowed in the event of confirmation as an expense of administration to the extent deemed reasonable and necessary by the court, and may be allowed when there is no confirmation. Such expense incurred by the committee before its selection pursuant to Rule 11-27 shall not be disallowed because of a change in the committee's composition provided a majority of the committee when it incurred the expense continues as members of the selected committee. An application by an attorney, accountant, or other agent for compensation or reimbursement of expenses or an application by a committee for reimbursement of expenses paid as compensation, shall be governed by Bankruptcy Rule 219. Expenses deemed reasonable and necessary by the court incurred by the committee other than for compensation of an attorney, accountant, or other agent or incurred by any selected member of the committee in connection with services performed as a member after the filing of the petition, may also be allowed as an expense of administration after hearing on such notice to such persons as the court may direct, whether or not a plan is confirmed. No member of the committee may be compensated for services rendered by him in the case.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is derived from §§ 338, 339, and 44b of the Act, and Bankruptcy Rule 214. Subdivision (c) provides for compensation of those employed by a selected committee if a plan is confirmed and permits the court, in the exercise of its discretion, to award such compensation as an expense of administration if confirmation is denied. This provision is new. Also new is the provision permitting selected members of the committee to be reimbursed for their expenses incurred while serving on the committee, after selection and the filing of the petition, if those expenses are found by the court to have been both reasonable and necessary. Such reimbursement is similarly discretionary with the court.

The last sentence of the rule would not permit a selected member of the committee to be compensated for services including compensation for acting as the attorney for the committee while remaining as a member of the committee.

Rule 11-30. Duty of Trustee, Receiver, or Debtor in Possession to Keep Records, Make Reports, and Furnish Information.

Bankruptcy Rule 218 applies in Chapter XI cases, except that (1) the written report of the financial condition of the estate shall be made by the trustee, receiver, or debtor in possession within a month after the filing of a petition commencing a Chapter XI case and every month thereafter, and shall include a statement of the operation of the business for the preceding month and, if payments are made to employees, the amounts of deductions for withholding and social security taxes and the place where such amounts are deposited and, (2) the court may excuse the filing of a final report and account by the trustee or receiver, and a debtor in possession need not file a final report and account unless ordered to do so by the court.

NOTES OF ADVISORY COMMITTEE ON RULES

The final report and account required by clause (5) of Bankruptcy Rule 218 may incorporate earlier-filed interim detailed statements of receipts and disbursements if it contains such a detailed statement for the period following the last interim statement incorporated by reference.

Rule 11-31. Compensation for Services and Reimbursement of Expenses.

Bankruptcy Rule 219 applies in Chapter XI cases. Reasonable compensation for services beneficial to the estate and reimbursement of necessary expenses may be allowed to the attorney for the debtor and debtor in possession whether or not a plan is confirmed.

NOTES OF ADVISORY COMMITTEE ON RULES

Under this rule, the provisions of Bankruptcy Rule 219 would apply to compensation sought for services in the Chapter XI case and any case superseded thereby. The second sentence is to clarify the practice of permitting compensation, where a Chapter XI case is converted to bankruptcy, to the attorney for the debtor for services which had benefited the estate. See *In re Knickerbocker Leather & Novelty Co.*, 158 F. Supp. 236 (S.D.N.Y. 1958), *aff'd sub nom. Haar* v. *Oseland*, 265 F. 2d 218 (2d Cir. 1959); *Matter of Styles Express, Inc.*, No. 62B 922 (S.D.N.Y. 1971) (permitting compensation); *Robinson, Wolas, & Hagen* v. *Gardner*, 433 F. 2d 1004 (9th Cir. 1970) (disallowing compensation).

Rule 11-32. Examination of Debtor's Transactions with His Attorney.

Bankruptcy Rule 220 applies in Chapter XI cases.

Rule 11-33. Claims.

(a) Form and Content of Proof of Claim; Evidentiary Effect.

Bankruptcy Rule 301 applies in Chapter XI cases.

(b) Filing Proof of Claim.

(1) *Manner and Place of Filing.* Bankruptcy Rule 302(a), (b), (c) and (d) apply in Chapter XI cases. When the petition is filed pursuant to Rule 11-7, all claims filed in the pending bankruptcy case shall be deemed filed in the Chapter XI case.

(2) *Time for Filing.* A claim, including an amendment thereof, must be filed before confirmation of the plan except as follows:

(A) if scheduled by the debtor as undisputed, not contingent, and liquidated as to amount, a claim or an amendment to a claim may be filed within 30 days after the date of mailing notice of confirmation to creditors but in such event shall not be allowed for an amount in excess of that set forth in the schedule; and

(B) a claim arising from the rejection of an executory contract of the debtor, and a post-petition claim allowed to be filed under paragraph (3) of this subdivision, may be filed within such time as the court may direct.

(C) Bankruptcy Rule 302(e)(3) applies in Chapter XI cases.

(3) *Post-Petition Tax Claims.* Notwithstanding paragraph (2) of this subdivision, the court may, at any time while a case is pending, permit the filing of a proof of claim for the following:

(A) Claims for taxes owning to the United States, a state, or any subdivision thereof, at the time of the filing of the petition under Rule 11-6 or 11-7 which had not been assessed prior to the date of confirmation of the plan, but which are assessed within one year after the date of the filing of the petition.

(B) Claims for taxes owing to the United States, a state, or any subdivision thereof, after the filing of the petition under Rule 11-6 or 11-7 and which are assessed while the case is pending.

(c) Filing of Tax and Wage Claims by Debtor.

Bankruptcy Rule 303 applies in Chapter XI cases.

(d) Claim by Codebtor.

A person who is or may be liable with the debtor, or who has secured a creditor of the debtor, may, if the creditor fails to file his proof of claim on or before the first date set for the first meeting of creditors, execute and file a proof of claim pursuant to this rule, including an acceptance of the plan or any modification thereof, in the name of the creditor, if known, or if unknown, in his own name. No distribution shall be made on the claim except on satisfactory proof that the original debt will be diminished by the amount of distribution. The creditor may nonetheless file a proof of claim pursuant to subdivisions (a) and (b) of this rule and, at any time before the court determines that the plan or any modification thereof has been accepted by the number and amount of creditors required for confirmation, an acceptance or revocation of the acceptance by such person, if any, of the plan, or any modification thereof. Such proof of claim and such revocation of acceptance shall supersede the proof of claim and acceptance filed pursuant to the first sentence of this subdivision. In the event the creditor files a claim and does not file a revocation of acceptance, the acceptance filed by the codebtor shall be deemed made on the creditor's behalf.

(e) Objections to and Allowance of Claims; Valuation of Security.

Bankruptcy Rule 306 applies in Chapter XI cases.

(f) Reconsideration of Claims.

Bankruptcy Rule 307 applies in Chapter XI cases.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (*b*) (*2*) of this rule is derived from § 355 of the Act. It also clears up an ambiguity not answered by the statute respecting the status of amendments to proofs of claim. Under this rule an amendment must be filed within the same time as the original proof of claim and it is not possible to obtain an extension of time based upon the amending process. A scheduled claim filed late may be allowed if it is scheduled in a liquidated amount. It would meet the test for such allowability under subdivision (b) (2) (A) unless the debtor indicates on the schedules that the claim is disputed or contingent.

Subdivision (*b*) (*3*) is based upon § 397 of the Act. Express inclusion in these subparagraphs of taxes owing to a subdivision of a state incorporates the interpretation placed on § 271 which like § 397 refers to taxes owing to the United States "or any state." *Berryhill* v. *Gerstel,* 196 F. 2d 304 (5th Cir. 1952); *Senfour Investment Co.* v. *King County,* 66 Wash. 2d 644, 404 P. 2d 760 (1965) *appeal dismissed and cert. denied,* 385 U.S. 1 (1966).

Under § 357(6) of the Act, the plan may contain provisions for payment of debts incurred after the filing of the petition with priority over pre-petition claims; these types of debts would be entitled to priority in any event as expenses of administration.

Subdivision (*d*) is derived from § 57i of the Act and General Order 21(4). Section 57i is applicable to Chapter XI cases. See 9 Collier 20, n. 12a (1963). The subdivision of the Act and the general order, however, authorizes a filing procedure only by a person who has secured a creditor of the debtor by his "individual undertaking." The rule goes further by authorizing the same procedure to be followed when the person has secured a creditor of the debtor by pledging collateral or otherwise creating a security interest in his own property, without assuming any personal obligation to the creditor. The rule assures a fair opportunity for a codebtor to exercise the right of filing in the name of the creditor (or in his own name if that of the creditor is unknown) by recognizing that he should not be required to wait until the last minute before the expiration of the period allowed for the filing of claims. In addition to filing the claim, the surety may also file an acceptance of the plan. The creditor, however, may within the time limits specified by these rules, file his own proof of claim and acceptance or revocations of the surety's acceptance if he so desires. If he fails to revoke the surety's acceptance, he will be deemed to have ratified it. If the claim is filed by both the creditor and codebtor only one distribution on it may be made. As required expressly by this rule, such distribution must diminish the claim.

Subdivision (*a*) (*2*) (*C*) incorporates the provision of the Bankruptcy Rule prescribing a time for the filing of a claim by a creditor who disgorges a voidable transfer after confirmation.

Rule 11-34. Withdrawal of Acceptance or Claim.

A creditor may withdraw a claim as of right by filing a notice of withdrawal, except as provided in this rule. If, after a creditor has filed a claim, an objection is filed thereto or a complaint is filed against him in an adversary proceeding, or the creditor has accepted the plan or otherwise has participated significantly in the case, he may not withdraw the claim save on application or motion with notice to the trustee, receiver, or debtor in possession, and on order of the court containing such terms and conditions as the court deems proper. Unless the court directs otherwise, withdrawal of a claim shall constitute withdrawal of any related acceptance.

NOTES OF ADVISORY COMMITTEE ON RULES

Since 1938 it has generally been held that Rule 41 of the Federal Rules of Civil Procedure governs the withdrawal of a proof of claim. *In re Empire Coal Sales Corp.*, 45 F. Supp. 974, 976 (S.D.N.Y.) aff'd sub nom. *Kleid* v. *Ruthbell Coal Co.*, 131 F. 2d 372, 373 (2d Cir. 1942); *Kelso* v. *Maclaron,* 122 F. 2d 867, 870 (8th Cir. 1941); *In re Hills,* 35 F. Supp. 532, 533 (W.D. Wash. 1940). Accordingly, it was ruled in the cited cases that a proof of claim may be withdrawn only subject to approval by the court after an objection has been filed. This constitutes a restriction of the right of withdrawal as recognized by some though by no means all of the cases antedating the promulgation of the Federal Rules of Civil Procedure. See 3 Collier ¶ 57.12 (1961); Note, 20 Bost. U.L. Rev. 121 (1940).

The filing of a claim does not commence an adversary proceeding under these rules, but the filing of an objection to the claim initiates a contest that must be disposed of by the court. This rule recognizes the applicability of the considerations underlying Rule 41(a) of the Federal Rules of Civil Procedure to the withdrawal of a claim after it has been put in issue by an objection. Rule 41 (a) (2) of the Federal Rules of Civil Procedure provides for a bar to dismissal over the objection of a defendant who has pleaded a counterclaim prior to the service of the plaintiff's motion to dismiss. Although the applicability of this provision to the withdrawal of a claim was assumed in *Conway* v. *Union Bank of Switzerland*, 204 F. 2d 603, 608 (2d Cir. 1953), *Kleid* v. *Ruthbell Coal Co., supra Kelso* v. *Maclaren, supra, and In re Hills, supra,* this rule vests discretion in the court to grant, deny, or condition the request of a creditor to withdraw, without regard to whether the trustee, receiver, or debtor in possession has filed a merely defensive objection or a complaint seeking an affirmative recovery of money or property from the creditor.

A number of pre-1938 cases sustained denial of a creditor's request to withdrawn his proof of claim on the ground that he had estopped himself or made an election of remedies. 2 Remington, *Bankruptcy 186* (Henderson ed. 1956); *cf.* 3 Collier 201 (1961). Voting his claim in an election of a trustee in a bankruptcy case was an important factor in the denial of a request to withdraw in *Standard Varnish Works* v. *Haydock*, 143 Fed. 318, 319–20 (6th Cir. 1906), and *In re Cann*, 47 F. 2d 661, 662 (W.D. Pa. 1931), and voting on the plan in a Chapter XI case would appear to be of similar significance. It has frequently been recognized also that a creditor should not be allowed to withdraw his claim once he has accepted a dividend. *In re Friedman*, 1 Am. B.R. 510, 512 (Ref., S.D.N.Y. 1899); 3 Collier 205 (1964): *cf. In re O'Gara Coal Co.*, 12 F. 2d 426, 429 (7th Cir.), cert. denied, 271 U.S. 683 (1926). It was held in *Industrial Credit Co.* v. *Hazen*, 222 F. 2d 225 (8th Cir. 1955), however, that although a claimant has participated in the first meeting of creditors and in the examination of witnesses, he was entitled under Rule 41(a)(1) of the Federal Rules of Civil Procedure to withdraw his claim as of right when he filed a notice of withdrawal before the trustee filed an objection under § 57g of the Act. While this rule incorporates the post-1938 case law referred to in the first paragraph of this note, it rejects the implication drawn in the *Hazen* case that Rule 41(a) of the Federal Rules of Civil Procedure supersedes the pre-1938 case law that vests discretion in the court to deny or restrict withdrawal of a claim by a creditor on the ground of estoppel or election of remedies. While purely formal or technical participaton in a case by a creditor who has filed a claim should not deprive him of a right to withdraw his claim, a creditor who has accepted a dividend or who voted on the plan or otherwise participated actively in a case should be permitted to withdraw only with the approval of the court on terms deemed appropriate by it after notice to the debtor and the trustee, or receiver. 3. Collier 205–06 (1964).

Rule 11-35. Distribution; Undistributed Consideration; Unclaimed Funds.

(a) Distributions.

Except as otherwise provided in the plan, Bankruptcy Rule 308 applies in Chapter XI cases to cash distributions made under a plan. Except as otherwise provided in the plan or ordered by the court, consideration other than cash distributed under the plan shall be issued in the name of the creditor entitled thereto and, if a power of attorney authorizing another person to receive dividends has been executed and filed in accordance with Bankruptcy Rule 910, such consideration shall be transmitted to such other person.

(b) Undistributed Consideration.

Except as provided in subdivision (c) of this rule, or as otherwise ordered by the court, the disbursing agent shall return to the debtor or to such other person as may be designated by the court any money or other deposited consideration in his possession not distributed under the plan.

(c) Unclaimed Funds.

Sixty days after any distribution, the disbursing agent shall stop payment on all checks then unpaid. Bankruptcy Rule 310 shall otherwise apply in Chapter XI cases.

Notes of Advisory Committee on Rules

Subdivision (*b*) codifies existing practice, returning to the debtor any funds not needed to make payments under the plan. Pursuant to court order some or all of such funds may be returned to the debtor before distribution under the plan has been fully completed. If the debtor is not entitled to the purplus funds but some third party is, the rule permits return to that third party. This subdivision applies to surplus funds and any other undistributed consideration.

Insofar as subdivision (c) deals with the unclaimed money to be distributed under the plan or the Act, it is derived from § 66 of the Act. The provision of the Act that the unclaimed money so deposited shall not be subject to escheat under the laws of any state is a rule of substantive law not appropriate for inclusion in the rule.

Rule 11-36. Filing of Plan; Transmission to Creditors; Adjourned Meeting.

(a) Filing of Plan; Number of Copies.

The debtor may file a plan with his petition or thereafter, but not later than a time fixed by the court. The debtor, if required by the court, shall promptly furnish a sufficient number of copies of the plan to enable the court to transmit them as provided in subdivision (b) of this rule.

(b) Transmittal of Plan to Creditors; Adjourned Meetings.

If a plan is filed prior to mailing of notice of the first meeting of creditors, a copy of the plan shall accompany the notice. If the debtor has not filed a plan prior to the first date set for the first meeting of creditors, the court, at the first meeting or thereafter, shall fix a time for filing a plan. If a plan is not filed prior to the mailing of notice of the first meeting of creditors, the court, at the first meeting, shall adjourn the meeting to a date certain. When a plan is filed, a copy thereof and notice of a subsequent adjourned meeting date shall be mailed to the persons specified in Rule 11-24(a) at least 10 days prior to such date. The court may adjourn a first meeting of creditors from time to time to dates certain.

Notes of Advisory Committee on Rules

The time for filing a plan follows §323 of the Act. It may be filed with the Chapter XI petition or after the petition has been filed; however, if the court has fixed a time for filing the plan, it must be filed within that time. The court may fix such time at the first meeting, at any adjourned first meeting, or at any time.

Copies of the plan are to be transmitted to creditors either with the notice of the first meeting of creditors, or with notice of any adjourned date of the plan is not filed in sufficient time for it to be sent with the first notice. To enable the court to transmit the copies, the debtor should furnish the number necessary if so required by the court.

When a plan is not filed in time for it to accompany the notice of the first meeting that meeting must at some point be adjourned to enable creditors to receive copies of the plan. That original first meeting, however, may be held on the first date set to conduct such other business as may be appropriate.

Rule 11-37. Acceptance or Rejection of Plans.

(a) Time for Acceptance or Rejection.

At any time prior to the conclusion of the first meeting of creditors, each creditor filing a claim may file with the court his acceptance of the plan. A creditor who files a claim but who fails to file an acceptance within the time prescribed, shall be deemed to have rejected the plan. Acceptances may be obtained before or after the filing of the petition and may be filed with the court on behalf of the accepting creditor.

(b) Form of Acceptance.

An acceptance of a plan shall be in writing, shall identify the plan accepted, and shall be signed by the creditor.

(c) Temporary Allowance.

Notwithstanding objection to a claim the court may temporarily allow it to such extent as to the court seems proper for the purpose of accepting a plan.

NOTES OF ADVISORY COMMITTEE ON RULES

Section 362 of the Act requires a plan to be accepted in writing filed with the court by the requisite number of creditors before the conclusion of the first meeting. Since acceptances are required, there is no need to file a formal rejection; failure to file an acceptance by a creditor who filed a claim will be tantamount to a rejection. The debtor or creditors may obtain acceptances before the filing of the petition which may be filed with the court on behalf of the accepting creditor. For the filing of an acceptance by an agent, attorney in fact or proxy, see Rule 11-63 (4) which incorporates Bankruptcy Rule 910(c).

A creditor whose claim is partially secured is entitled to accept or reject a plan to the extent his claim is unsecured. Valuation of secured claims for this purpose is provided for in Rule 11-33.

Rule 11-38. Deposit; Confirmation of Plan; Evidence of Title.

(a) Deposit.

At the first meeting of creditors, after plan has been accepted and before confirmation, the court shall (1) designate as disbursing agent the trustee or receiver, if any, otherwise the debtor in possession or a person specially appointed, to distribute, subject to the control of the court, the consideration, if any, to be deposited by the debtor; and (2) fix a time before confirmation within which the debtor shall deposit with the disbursing agent, or in such place and on such terms as the court may approve, the money necessary to pay all priority debts and costs of administration unless such claimants have waived such deposit or consented to provisions in the plan otherwise dealing with their claims, and the money or other consideration which under the plan is to be distributed to other creditors at the time of confirmation.

(b) Waiver.

Any person who has waived his right to share in the distribution of the deposit or in payments under the plan shall file with the court, prior to confirmation of the plan, a statement setting forth the waiver and any agreement with respect thereto made with the debtor, his attorney, or any other person.

(c) Objections to Confirmation.

Objections to confirmation of the plan shall be filed and served on the debtor, and the creditors' committee, if any, at any time prior to confirmation or by such earlier date as the court may fix. An objection to confirmation on the ground that the debtor committed any act or failed to perform any duty which would be a bar to the discharge of a bankrupt is governed by Part VII of the Bankruptcy Rules. Any other objection is governed by Bankruptcy Rule 914.

(d) Hearing on Confirmation.

The court shall rule on confirmation of the plan after hearing on notice as provided in Rule 11-24. The hearing may be held at any time after the conclusion of the first meeting of creditors. If no objection is timely under subdivision (c) of this rule, the court may find, without taking proof, that the debtor has not committed any act or failed to perform any duty which would be a bar to the discharge of a bankrupt and that the plan has been proposed and its acceptance procured in good faith, and not by any means, promises, or acts forbidden by law.

(e) Order of Confirmation.

The order of confirmation shall conform substantially to Official Form No. 11-F18. Notice of entry of the order of confirmation and a copy of the provisions of the order dealing with the discharge of the debtor shall be mailed to the debtor and to all creditors within 30 days after entry of the order.

(f) Evidence of Title.

A certified copy of the plan and of the order confirming the plan shall constitute conclusive evidence of the revesting of title to all property in the debtor or the vesting of title in such other person as may be provided in the plan or in the order confirming the plan.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (a) of this rule is derived from § 337 of the Act and retains the possibility of appointing a person other than the debtor in possession as disbursing agent where there is no receiver or trustee. If there is a receiver or trustee he shall act as the disbursing agent. A person other than a receiver, trustee, or debtor in possession may receive no more compensation than that allowed by the Act to a custodial receiver.

The language in clause (2) permitting a deposit in such place and on such terms as the court may approve is new and is intended to facilitate escrow arrangements and return of the deposit to the financier if, for example, consummation of confirmation is unduly delayed. The court can, of course, disapprove any such arrangement.

Subdivision (d) departs from §§ 337(3) and 362 of the Act and former Official Forms Nos. 50 and 52 by eliminating the requirement for a formal application for confirmation where all affected creditors have not accepted the plan and by requiring a hearing prior to confirmation even though all affected creditors have accepted the plan. The issues at such hearing may include all issues relating to confirmation under §§ 361, 362, and 366 and also any issue as to whether a creditor is affected by the plan under § 308.

The hearing on confirmation may occur immediately upon the conclusion of the first creditors' meeting. Objections to confirmation may be filed by creditors but they must be in writing and filed within a time fixed by the court, if any. If the court does not fix such a time they may be filed at any time prior to confirmation. The contested matter initiated by an objection to confirmation is governed by Bankruptcy Rule 914 unless it is of the type requiring an adversary proceeding under Part VII of the Bankruptcy Rules.

Official Form No. 11-F18 provides an appropriate form for confirmation which may be used either where all affected creditors have accepted the plan or where less than all have accepted the plan Official Form No. 11-F19 may be used to comply with subdivision (d) to give creditors notice of the entry of the order of confirmation and of the discharge provisions contained in the order.

Subdivision (b) is adapted from General Order 41. It will provide the court and other creditors with any information regarding outside agreements under lying a waiver of the right to share in the distribution or to obtain priority payments. The remainder of General Order

41, referring to the debtor's obligation to file an affidavit, is not incorporated in this rule. The substance of that part, however, may be found in the rule on examination, 11-26 and the rules on compensation, Rules 11-31 and 11-32.

In making the findings specified under subdivision (d), however, the court may require the debtor to file an affidavit similar to General Order 41 or otherwise inquire into such matters. For such inquiry, it should also be noted that the debtor is required to attend the hearing on confirmation and testify if so directed. See Rule 11-45.

Subdivision (c) requires objections to be served on the debtor and any creditor's committee. The committee to which it is refers is a creditors' committee elected pursuant to Rule 11-29. The court may require objections to be served on other parties if the circumstances warrant such service.

Subdivision (d) requires notice to all creditors of the hearing on confirmation but not of any hearing on objections if such hearing is separate. The notice of the hearing on confirmation is essentially a continuing notice, that is, once given, the date and hearing may be adjourned from time to time.

Rule 11-39. Modification of Plan Before Confirmation.

At any time prior to the acceptance of a plan by the requisite majority of creditors, the debtor may file a modification thereof. After a plan has been so accepted and before its confirmation the debtor may file a modification of the plan only with leave of court. The debtor may also submit with the proposed modification written acceptances thereof by creditors. If the court finds that the proposed modification does not materially and adversely affect the interest of any creditor who has not in writing accepted it, the modification shall be deemed accepted by all creditors who have previously accepted the plan. Otherwise, the court shall enter an order that the plan as modified shall be deemed to have been accepted by any creditor who accepted the plan and who fails to file with the court within such reasonable time as shall be fixed in the order a written rejection of the modification. Notice of such order accompanied by a copy of the proposed modification, shall be given to creditors and other parties in interest at least 10 days before the time fixed in such order for filing rejections of the modification. The debtor shall, if required by the court, furnish a sufficient number of copies of the proposed modification to enable the court to transmit a copy with each such notice.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule revises the procedure now covered by §§ 363 and 364 of the Act. The standard for determining whether a proposed modification affects the interest of a creditor who has not in writing accepted it is prescribed in § 308 of the Act. Official Form No. 11-F17 provides a form of order fixing a time for rejecting the proposed modification, combined with a notice thereof.

Rule 11-37 authorizes the debtor to obtain acceptances of a proposed plan from his creditors before or after the filing of his petition. Rule 11-36 authorizes the debtor to file a plan with the petition but he is not required to do so. There is no set time limit for filing a plan unless the court fixes a date. That procedure allows the debtor to submit modified plans without employing the practice for modification prescribed in this rule. Before a plan has been accepted by the requisite number of creditors, the debtor may file a proposed modification as a matter of right. After it has been accepted but before confirmation leave of court is necessary to file a modification. It should also be noted that express rejections in Chapter XI cases are only necessary in respect to modification of plans. The plan itself is deemed rejected by any creditor who filed a claim and did not accept the plan in writing. Under § 364 of the Act, a creditor may include, in his original acceptance of a plan, a rejection of any modification that may subsequently be proposed. This would be a routine, form rejection not directed to any specific modification that has already been proposed. This rule effects a change of that statutory provision. Pursuant to this rule, such routine rejection would not be effective. If and when a modification is proposed, that modification must be specifically rejected by any creditor who has previously accepted the plan and a failure to so reject will constitute an acceptance of the modification.

Rule 11-40. Modification of Plan After Confirmation Where Court Has Retained Jurisdiction.

At any time during the period of a confirmed plan providing for extension and before payment in full of deferred installments or delivery of negotiable promissory notes, if any, to the creditors, where the court has retained jurisdiction pursuant to the Act, the debtor may file an application with leave of court to modify the terms of the plan by changing the time of payment or reducing the amount of payment, or both. The application shall set forth the reason for the proposed modification, and shall be accompanied by a list of names and addresses of all creditors who have extended credit to the debtor since the plan was confirmed. If the court permits the application to be filed, it shall call a meeting of creditors including those who extended credit after confirmation of the plan, and other parties in interest, and a copy of the proposed modification shall accompany the notice of such meeting. The court, at such meeting, shall confirm the plan as modified if it is accepted in the manner required for confirmation of the original plan by the creditors who are provided for in the plan and are affected by such modification.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule incorporates the modification procedure now specified in § 387 of the Act. Creditors who extended credit after the filing of the petition and before confirmation are treated as administration expense claimants and their claims would have been fully paid or provided for in full in the plan.

Rule 11-41. Revocation of Confirmation.

Any party in interest may, at any time within six months after a plan has been confirmed, make a motion pursuant to the Act to revoke the confirmation as procured by fraud. The circumstances constituting the alleged fraud shall be stated with particularity. When such motion is made, the court shall reopen the case if necessary and conduct a hearing on at least 10 days' notice to all parties in interest. If the confirmation is revoked—

(1) The court may dispose of the case pursuant to Rule 11-42(b); or

(2) The court may receive proposals to modify the plan. Thereafter, the procedure for modification and for confirmation of a plan as modified shall follow Rules 11-38 and 11-39, except that acceptance of the plan shall not be required by any creditor who has participated in the fraud and such creditor shall not be counted in determining the number and amount of the claims of creditors whose acceptance is required. If a modified plan is not confirmed, the court shall dispose of the case pursuant to Rule 11-42(b).

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is a revision of the procedure contained in § 386 of the Act. While paragraph (1) makes no significant change in § 386 of the Act. While paragraph (1) makes no significant change in § 386(1), paragraph (2) gives the same protection to the innocent debtor and innocent creditors where modification is made to correct fraud for which they are not responsible as they now have in instances of modification before confirmation under Rules 11-38 and 11-39.

Section 386 of the Act apparently permits the court to grant relief contained in paragraphs (1), (2), and (3) thereof where the debtor participated in or had knowledge of the fraud. This rule reaches that result more definitely; even though there has been such participation or knowledge, it may well be in the interest of creditors to go forward with a plan as modified rather than having the case converted to bankruptcy.

The notice of the hearing on the motion to revoke confirmation is to be given by the court.

Rule 11-42. Dismissal or Conversion to Bankruptcy Prior to or After Confirmation of Plan.

(a) Voluntary Dismissal or Conversion to Bankruptcy.

The debtor may file an application or motion to dismiss the case or to convert it to bankruptcy at any time prior to confirmation or, where the court has retained jurisdiction, after confirmation. On the filing of such application or motion, the court shall—

(1) if the petition was filed pursuant to Rule 11-7, enter an order directing that the bankruptcy case proceed; or

(2) if the petition was filed pursuant to Rule 11-6, enter an order adjudicating the debtor a bankrupt if he so requests, or, if he requests dismissal, enter an order after hearing on notice dismissing the case or adjudicating him a bankrupt whichever may be in the best interest of the estate.

(b) Dismissal or Conversion to Bankruptcy for Want of Prosecution, Denial or Revocation of Confirmation, Default, or Termination of Plan.

The court shall enter an order, after hearing on such notice as it may direct dismissing the case, or adjudicating the debtor a bankrupt if he has not been previously so adjudged, or directing that the bankruptcy case proceed, whichever may be in the best interest of the estate—

(1) for want of prosecution; or

(2) for failure to comply with an order made under Rule 11-20(d) for indemnification; or

(3) if confirmation of a plan is denied; or

(4) if confirmation is revoked for fraud and a modified plan is not confirmed pursuant to Rule 11-41; or

(5) where the court has retained jurisdiction after confirmation of a plan:

(A) if the debtor defaults in any of the terms of the plan; or

(B) if a plan terminates by reason of the happening of a condition specified therein.

The court may reopen the case, if necessary, for the purpose of entering an order under this subdivision.

(c) Notice of Dismissal.

Promptly after entry of an order of dismissal under this rule, notice thereof shall be given as provided in Rule 11-24.

(d) Effect of Dismissal.

Unless the order specifies to the contrary, dismissal of a case under this rule on the ground of fraud is with prejudice, and a dismissal on any other ground is without prejudice. A certified copy of the order of dismissal under this rule shall constitute conclusive evidence of the revesting of the debtor's title to his property.

(e) Consent to Adjudication.

Notwithstanding the foregoing, no adjudication shall be entered under this rule against a wage earner or farmer without his written consent.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (a) of this rule is derived in part from §§ 377 and 386 of the Act. A debtor who has filed his petition in a pending bankruptcy case may at any time before confirmation or, if the court has retained jurisdiction, after confirmation, voluntarily cause the bankruptcy case to proceed. The application may be ex parte. If the debtor seeks dismissal of the case, a hearing is required on notice to creditors, and the court may either adjudicate him a bankrupt if he had filed an original Chapter XI petition, or dismiss the case whichever is in the interest of the debtor and the creditors. The debtor may also convert the Chapter XI case to bankruptcy voluntarily under this subdivision if the Chapter XI petition was an original petition.

Under *subdivision (b)*, for all the causes listed whether occurring before or after confirmation (if the court retained jurisdiction) the court may dismiss the case, adjudicate the debtor a bankrupt if he has not been previously adjudged, or direct the bankruptcy case to proceed whichever is in the interest of the debtor and creditors. Thus the court may, if the petition was filed in a pending bankruptcy case, adjudge the debtor a bankrupt or permit adjudication to follow the normal route if there had been an involuntary petition but no adjudication prior to the filing of the Chapter XI petition. Among the causes listed is "want of prosecution" which includes failure to file schedules and statements, failure to propose a plan, withdrawal or abandonment of a plan, or failure to make any deposit required by the plan, all of which are now specified in § 376 of the Act. This rule was not intended to preclude the possibility of confirmation of a revised plan in the same case after confirmation of a plan earlier proposed had been denied.

The provision in *subdivision (c)* for notice of dismissal is for the purpose of notifying creditors that no discharge has been granted and to correct their assumption to the contrary so that they can take whatever steps to protect their claims as may be appropriate and necessary before the statutes of limitation have run.

Subdivision (d) is new. The first sentence gives discretion to the court to determine whether dismissal should bar future relief under the Act, but when it makes no specific reference one way or the other in the order, unless the dismissal was for fraud, a dismissal is without prejudice. For discussion of this point see Advisory Committee's Note to subdivision (c) of Bankruptcy Rule 120. The second sentence prescribes the evidentiary effect of a certified copy of the order of dismissal.

Subdivision (e) is derived from § 379 of the Act.

Note should be taken that secured creditors should receive the notices provided for in Rule 11-24, which includes notices under this rule.

Rule 11-43. Confirmation as Discharge.

(a) Statement of Discharge.

The order confirming a plan shall contain provisions substantially similar to Official Form No. 11-F18 stating the effect of confirmation on the further enforcement of claims against the debtor.

(b) Registration in Other Districts.

An order confirming a plan that has become final may be registered in any other district by filing in the office of the clerk of the district court of that district a certified copy of the order and when so registered shall have the same effect as an order of the court of the district where registered and may be enforced in like manner.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (*a*) is derived from § 371 of the Act and renders uniform the practice of providing expressly in the order confirming the plan for the discharge of the debtor. With this express statement, the order will then contain the essential features of § 14f of the Act, and this part of the order can be mailed to creditors pursuant to Rule 11-38 and § 14h of the Act.

Subdivision (*b*) is derived from § 14g of the Act and provides the same registration procedure for a Chapter XI debtor as for a bankrupt. Registration may facilitate the enforcement of the order of discharge in a district other than that in which it was entered. See 2 Moore, Federal Practice ¶ 1.04 [2] (2d ed. 1967). Because of the extraterritorial service of process authorized by Bankruptcy Rule 704, however, registration of the order of discharge is not necessary under these rules to enable a discharged debtor to obtain relief against a creditor proceeding in any district in the United States in disregard of the injunctive provision contained in the order.

Rule 11-44. Petition as Automatic Stay of Actions Against Debtor and Lien Enforcement.

(a) Stay of Actions and Lien Enforcement.

A petition filed under Rule 11-6 or 11-7 shall operate as a stay of the commencement or the continuation of any court or other proceeding against the debtor, or the enforcement of any judgment against him, or of any act or the commencement or continuation of any court proceeding to enforce any lien against his property, or of any court proceeding, except a case pending under Chapter X of the Act, for the purpose of the rehabilitation of the debtor or the liquidation of his estate.

(b) Duration of Stay.

Except as it may be deemed annulled under subdivision (c) of this rule or may be terminated, annulled, modified, or conditioned by the bankruptcy court under subdivision (d), (e), or (f) of this rule, the stay shall continue until the case is closed, dismissed, or converted to bankruptcy or the property subject to the lien is, with the approval of the court, abandoned or transferred.

(c) Annulment of Stay.

At the expiration of 30 days after the first date set for the first meeting of creditors, a stay provided by this rule other than a stay against lien enforcement shall be deemed annulled as against any creditor whose claim has not been listed in the schedules and who has not filed his claim by that time.

(d) Relief From Stay.

Upon the filing of a complaint seeking relief from a stay provided by this rule, the bankruptcy court shall, subject to the provisions of subdivision (e) of this rule, set the trial for the earliest possible date, and it shall take precedence over all matters except older matters of the same character. The court may, for cause shown, terminate, annul, modify or condition such stay. A party seeking continuation of a stay against lien enforcement shall show that he is entitled thereto.

(e) Ex Parte Relief From Stay.

Upon the filing of a complaint seeking relief from a stay against any act or proceeding to enforce a lien or any proceeding commenced for the purpose of rehabilitation of the debtor or the liquidation of his estate, relief may be granted without written or oral notice to the adverse party if (1) it clearly appears from specific facts shown by affidavit or by a verified complaint that immediate and irreparable injury, loss, or damage will result to the plaintiff before the adverse party or his attorney can be heard in opposition, and (2) the plaintiff's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting his claim that notice should not be required. The party obtaining relief under this subdivision shall be given written or oral notice thereof as soon as possible to the trustee, receiver, or debtor in possession and to the debtor and, in any event, shall forthwith mail to such person or persons a copy of the order granting relief. On 2 days' notice to the party who obtained relief from a stay provided by this rule without notice or on such shorter notice to that party as the court may prescribed, the adverse party may appear and move its reinstatement, and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(f) Availability of Other Relief.

Nothing in this rule precludes the issuance of, or relief from, any stay, restraining order, or injunction when otherwise authorized.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule supplements and reinforces the policy of §§ 11a, 311 and 314 of the Act. Section 11a provides in terms for a mandatory stay of all actions founded on dischargeable claims which are pending against the debtor when the petition is filed, and § 314 authorizes the stay of pending actions and of the commencement of actions whether or not founded on dischargeable claims. Section 314 also authorizes the stay of any act or proceeding to enforce any lien on the property of the debtor. The term "lien" is used in this rule to indicate a consensual security interest in person or real property, a lien obtained by judicial proceedings, a statutory lien, or any other variety of charge against property securing an obligation. The authority conferred by § 314 with respect to staying enforcement of liens is discretionary; nonetheless § 311 gives the court exclusive jurisdiction of the debtor and its property wherever located and this jurisdictional grant includes granting stays and injunctions. See 8 Collier ¶ 3.02 (1963). The relief from a stay obtainable under subdivision (c) or (d) of the rule could appropriately include permission to reclaim collateral.

Subdivision (*a*) provides that the petition shall operate as a stay of any action, or the enforcement of any judgment, or any act or proceeding to enforce a lien on property of the debtor or any proceeding commenced for the liquidation or rehabilitation of the debtor. This conforms Chapter XI cases with Chapter X cases by including those matters within §§ 113, 116, and 148, such as a pending bankruptcy proceeding, mortgage foreclosure, equity receivership, and the like. Thus, the procedure would be the same, respresenting a change from § 325 of the Act. The reference to a stay of other proceedings against the debtor is to signify the inclusion of a pending arbitration proceeding within the scope of the automatic stay.

As provided in subdivision (b), the stay provided by this rule continues generally during the pendency of the case unless the case is converted to bankruptcy. In the latter event the stay provisions of Bankruptcy Rules 401 and 601 would become applicable.

A creditor who is subject to the stay of this rule obtain relief therefrom in appropriate cases by filing a complaint in the court pursuant to subdivision (d). The adversary proceeding thereby commenced is governed by Part VII of the Bankruptcy Rules subject to the requirement of subdivision (d) that the trial date be set for the earliest possible time and given precedence over all other matters not of the same character.

Note should be taken of Rule 11–24 which includes secured creditors as those to whom notice of the first meeting of creditors is transmitted. That notice informs all creditors of the stay against lien enforcement provided for in this rule.

Rule 11–45. Duties of Debtor.

Bankruptcy Rule 402 applies in Chapter XI cases and, in addition to the duties specified therein, the debtor shall attend at the hearing on confirmation of a plan and, if called as a witness, testify with respect to issues raised.

NOTES OF ADVISORY COMMITTEE ON RULES

In addition to the duties imposed on a debtor by Bankruptcy Rule 402, this rule requires the debtor to attend the hearing on confirmation of a plan and, if called as a witness, to testify at such hearing. For example he may be requested to testify with respect to the matters which were required by affidavit pursuant to General Order 41. See also Rule 11–38 and Accompanying Note.

Rule 11–46. Apprehension and Removal of Debtor To Compel Attendance for Examination.

Bankruptcy Rule 206 applies in Chapter XI cases to a debtor and, if the debtor is a partnership, to the general partners and any other person in control of the partnership and, if the debtor is a corporation, to any or all of its officers, members of its board of directors or trustees or of a similar controlling body, a controlling stockholder or member, or any other person in control.

Rule 11–47. Exemptions.

Bankruptcy Rule 403(a) applies in Chapter XI cases.

NOTES OF ADVISORY COMMITTEE ON RULES

In Chapter XI cases an elaborate procedure for claiming and contesting exemptions is not necessary. Exempt property is not usually set apart to the debtor as it is to the bankrupt in a bankruptcy case. Accordingly, only subdivision (a) of Bankruptcy Rule 403 is made applicable in Chapter XI cases. Since no time limitations are imposed in this rule or in the bankruptcy rule, the debtor is not estopped from claiming exemptions under Bankruptcy Rule 403 if the Chapter XI case is later converted to bankruptcy, nor are creditors or the trustee prevented from objecting to the claim if there had been no litiagtion of the issue in the Chapter XI case.

Rule 11–48. Determination of Dischargeability of a Debt; Judgment on Nondischargeable Debt; Jury Trial.

Bankruptcy Rule 409 applies in Chapter XI cases except that the court may but need not make an order fixing a time for filing a complaint under § 17c(2) of the Act. If such an order is made, at least 30 days' notice of the time so fixed shall be given to all creditors in the manner provided in Rule 11–24. The court may for cause, on its own initiative or on application of any party in interest, extend the time so fixed under this rule. If such an order is not made, a complaint to determine the dischargeability of a debt under clause (2), (4), or (8) of § 17a or the Act may be filed at any time.

NOTES OF ADVISORY COMMITTEE ON RULES

Due to the nature of a Chapter XI case, it is not always feasible to require the filing of complaints to determine the dischargeability of debts under § 17c(2) the Act within 30 and 90 days after the first date set for the first meeting of creditors. Normally it would be more desirable to wait until a plan is confirmed or at least until it appears that confirmation is likely. In any event, there is no need to require the court to fix an early time for the filing of the complaint. Such time may be fixed by the court as it deems in the best interest of the administration of the estate. Where the court does fix a time, the period for giving notice of that time is the same as in Bankruptcy Rule 409. Pursuant to Bankruptcy Rule 409 and § 17c(1) of the Act, the debtor can file a complaint to determine the dischargeability of a debt at any time even if the court does not fix a date. If no time is fixed by the court, a complaint by debtor or creditor can be filed even after confirmation and if necessary, pursuant to § 17c(4), a state court action commenced after confirmation can be stayed. This stay would be applicable if the debtor files his complaint in the bankruptcy court.

If the Chapter XI petition is filed in a pending bankruptcy case, and the time for filing complaints had been fixed in the bankruptcy case, the automatic stay of administration of the bankruptcy case pursuant to Rule 11–7 would render the date ineffective and a new one could be fixed by the court in the Chapter XI case.

Rule 11–49. Duty of Trustee, Receiver, or Debtor in Possession To Give Notice of Chapter XI Case.

Bankruptcy Rule 602 applies in Chapter XI cases.

Rule 11–50. Burden of Proof as to Validity of Post-Petition Transfer.

Bankruptcy Rule 603 applies in Chapter XI cases.

Rule 11–51. Accounting by Prior Custodian of Property of the Estate.

Bankruptcy Rule 604 applies in Chapter XI cases.

Rule 11–52. Money of the Estate; Deposit and Disbursement.

Bankruptcy Rule 605 (b) and (c) apply in Chapter XI cases.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (a) of Bankruptcy Rule 605 is inapplicable in Chapter XI cases because it concerns collecting the property of the estate and converting it to money; these parts of a trustee's functions are applicable only where the estate is being liquidated.

Rule 11–53. Rejection of Executory Contracts.

When a motion is made for the rejection of an executory contract, including an unexpired lease, other than as part of the plan, the court shall set a hearing on notice to the parties to the contract and to such other persons as the court may direct.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is derived from § 313(1) of the Act. As provided in § 357(2) of the Act, the plan may also include provisions for the rejection of executory contracts of the debtor, and § 353 provides that if an executory contract is rejected by the plan or pursuant to permission given by the court any person injured by such rejection shall be deemed a creditor.

Chapters X, XII, and XIII of the Act contain substantially identical provisions for rejection of executory contracts with permission of the court (§§ 116(1), 413(1), and 613(1)) or by provisions in the plan (§§ 216(4), 461 (4), and 646(6)) and for the claims of those injured by the rejection (§§ 202, 458, and 642). In view of these provisions in Chapter X it has long been recognized that so much of § 70b of the Act as fixes a time for the trustee to assume or reject executory contracts within 60 days after adjudication or within 30 days after his qualification, whichever is later, and provides that any contract not assumed or rejected within that time shall be deemed to be rejected, is inapplicable in Chapter X proceedings. *Texas Importing Co.* v. *Banco Popular de Puerto Rico*, 360 F. 2d 582 (5th Cir. 1966); *Title Insurance & Guaranty Co.* v. *Hart*, 160 F. 2d 961 (9th Cir.) cert. denied 332 U.S. 761 (1947); *In re M & S Amusement Enterprises Inc.*, 122 F. Supp. 364 (D. Del. 1954); *In re Childs Co.*, 64 F. Supp. 282 (S.D.N.Y. 1944). As was said in *Texas Importing Co.* v. *Banco Popular de Puerto Rico, supra*, at p. 584, these provisions in Chapter X "clearly indicate Congress intended that before an executory contract should be rejected, a judicial hearing and inquiry, at which interested parties might be heard, should be held, and that an executory contract could be rejected only with permission of the court. . . ." See also *B.J.M. Realty Corp.* v. *Ruggieri*, 326 F. 2d 281 (2d Cir. 1963) and *B.J.M. Realty Corp.* v. *Ruggieri*, 338 F. 2d 653 (2d Cir. 1964), holding that a lessor waived his option to terminate a lease by accepting rental payments for four months following the filing of a Chapter XI petition by the lessee, so that the lease could thereafter be affirmed, and *Floro Realty & Investment Co.* v. *Steem Electric Corp.*, 128 F. 2d 338 (8th Cir. 1942), holding that where the lessor exercises his option to cancel a lease four months after the lessee files a Chapter X petition all liability for future rent is terminated.

It has also been recognized that, under the pertinent provisions of Chapters X and XI, the other party to an executory contract has no provable claim until his contract is rejected so that, if there has been no rejection with permission of the court prior to confirmation of a plan, "he may insist that his contract be either rejected or assumed under the plan and may apply to the . . . court to protect his interest at the confirmation hearing or before." *In re Greenpoint Metallic Bed Corp.* v. *Wise Shoe Stores, Inc.*, 111 F. 2d 287, 290 (2d Cir.), cert. denied 311 U.S. 654 (1940). See also *Philadelphia Co.* v. *Dipple*, 312 U.S. 168, 174 (1941).

Rule 11-54. Appraisal and Sale of Property; Compensation and Eligibility of Appraisers and Auctioneers.

(a) Appraiser: Appointment and Duties.

The court may appoint one or more competent and disinterested appraisers who shall prepare and file with the court an appraisal of the property of the debtor. The court may prescribe how such appraisal shall be made.

(b) Sale of Property.

The court may, on such notice as it may direct and for cause shown, authorize the trustee, receiver, or debtor in possession to lease or sell any real or personal property of the debtor, on such terms and conditions as the court may approve.

(c) Compensation and Eligibility of Auctioneers and Appraisers.

Bankruptcy Rule 606(c) applies in Chapter XI cases to any appraiser or auctioneer appointed by the court.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is derived from §§ 333 and 313(2) of the Act, and incorporates Bankruptcy Rule 606(c) whenever the court appoints an appraiser or auctioneer.

Because the objective of Chapter XI cases is different from that of bankruptcy cases, the thrust of the Chapter XI rule is not to require an appraisal but merely to permit one on application. In bankruptcy, there would be an appraisal unless the court determines it to be unnecessary. See Bankruptcy Rule 606(a).

Subdivision (*b*) also recognizes a difference between the two types of cases. In bankruptcy the property will be sold; in a Chapter XI case a sale, other than in the ordinary course of business, would be exceptional. This subdivision follows § 313(2) of the Act permitting flexibility in the method and form of the sale but the court could, in prescribing such matters, refer to Bankruptcy Rule 606(b).

An application for the appointment of an appraiser may be made by any party in interest or the appointment may be made by the court on its own initiative.

Rule 11-55. Abandonment of Property.

After hearing on such notice as the court may direct and on approval by the court the trustee, receiver, or debtor in possession may abandon any property.

Rule 11-56. Redemption of Property From Lien or Sale.

Bankruptcy Rule 609 applies in Chapter XI cases.

Rule 11-57. Prosecution and Defense of Proceedings by Trustee, Receiver, or Debtor in Possession.

Bankruptcy Rule 610 applies in Chapter XI cases.

Rule 11-58. Preservation of Voidable Transfer.

Bankruptcy Rule 611 applies in Chapter XI cases.

Rule 11-59. Proceeding To Avoid Indemnifying Lien or Transfer to Surety.

Bankruptcy Rule 612 applies in Chapter XI cases.

Rule 11-60. Courts of Bankruptcy; Officers and Personnel; Their Duties.

Part V of the Bankruptcy Rules applies in Chapter XI cases.

NOTES OF ADVISORY COMMITTEE ON RULES

While confirmation of a plan has the effect of discharging the debtor from his liabilities under § 371 of the Act, a provision in the rules for an index of confirmation orders is not necessary, nor is it necessary to provide for the issuance of certificates of discharge. Accordingly, the provisions in Rule 507(c) with respect to an index and certificate of discharge are inapplicable to Chapter XI cases.

Rule 11-61. Adversary Proceedings.

(a) Adversary Proceedings.

Part VII of the Bankruptcy Rules governs any proceeding instituted by a party before a bankruptcy judge in a Chapter XI case to (1) recover money or property other than a proceeding under Rule 11-32 or Rule 11-51, (2) determine the validity, priority, or extent of a lien or other interest in property, (3) sell property free of a lien or other interest for which the holder can be compelled to take a money satisfaction, (4) obtain an injunction, (5) obtain relief from a stay as provided in Rule 11-44, (6) object to confirmation of a plan on the ground that the debtor has committed any act or failed to perform any duty which would be a bar to the discharge of a bankruptcy, or (7) determine the dischargeability of a debt. Such a proceeding shall be known as an adversary proceeding.

(b) Reference in Bankruptcy Rules.

As applied in Chapter XI cases, the reference in Rule 741 to "a complaint objecting to the bankrupt's discharge" shall be read to include also a reference to "a complaint objecting to the confirmation of a plan on the ground that the debtor has committed any act or failed to perform any duty which would be a bar to the discharge of a bankrupt."

NOTES OF ADVISORY COMMITTEE ON RULES

Part VII of the Bankruptcy Rules (Rules 701 to 782 inclusive) are incorporated to govern the procedural aspects of most of the litigation within the jurisdiction of the court in Chapter XI cases. Subdivision (a) of this rule substitutes an expanded definition of adversary proceedings in Chapter XI cases for that contained in Bankruptcy Rule 701. Rule 11-2 indicates other substitutions and translations of terms necessary for this purpose.

Rule 11-62. Appeal to District Court.

Part VIII of the Bankruptcy Rules applies in Chapter XI case, except that:

(1) Rule 802(c) thereof shall read as follows:

"(c) Extension of Time for Appeal."

"The referee may extend the time for filing the notice of appeal by any party for a period not to exceed 20 days from the expiration of the time otherwise prescribed by this rule. A request to extend the time for filing a notice of appeal must be made before such time has expired, except that a request made after the expiration of such time may be granted upon a showing of excusable neglect if the judgment or order does not authorize the sale of any property or the issuance of any certificate of indebtedness, or is not a judgment or order under Rule 11-38 confirming a plan, or is not a judgment or order under Rule 11-42 dismissing a Chapter XI case, or converting a Chapter XI case to bankruptcy."

(2) The following shall be added to Rule 805 thereof:

"Unless an order approving a sale of property or issuance of a certificate of indebtedness is stayed pending appeal, the sale to a good faith purchaser or the issuance of a certificate to a good faith holder shall not be affected by the reversal or modification of such order on appeal whether or not the purchaser or holder knows of the pendency of the appeal."

NOTES OF ADVISORY COMMITTEE ON RULES

Under Bankruptcy Rule 802(c) the time to appeal an order authorizing a sale of any property may not be extended unless a request therefor is filed within the regular appeal time. The same policy of establishing finality of referees' orders applies to orders authorizing the issuance of certificates of indebtedness, confirming a plan, or dismissing or converting a Chapter XI case in order for subsequent events to occur without fear of disruption.

Rule 11-63. General Provisions.

Part IX of the Bankruptcy Rules applies in Chapter XI cases, except that:

(1) The definitions of words and phrases in §§ 306 and 307 of the Act govern their use in the Chapter XI Rules to the extent they are not inconsistent therewith.

(2) The references to various rules in Rule 906(b) shall also include a reference to Chapter XI Rule 11-33(b)(2).

(3) The references to various rules in Rule 906(c) shall also include references to Chapter XI Rules 11-24(a), 11-25(a)(1), and 11-33(b)(2).

(4) The exception in Rule 910(c) for 'the execution and filing of a proof of claim" shall be read to include also "the execution and filing of an acceptance of a plan" and the reference to Official Forms in that rule shall include a reference to Official Form No. 11-F16.

(5) The reference in Rule 913(b) to "a dischargeable debt" shall be read as "a debt which is or will be provided for by the plan."

(6) The reference in Rule 919(a) to Rule 203(a) shall be read as a reference to Chapter XI Rule 11-24(a).

(7) The reference in Rule 922(b) to Rule 102 shall be read as a reference to Chapter XI Rule 11-5.

(8) The reference in Rule 924 to the time allowed by § 15 of the Act for the filing of a complaint to revoke a discharge shall be read to include also a reference to the time allowed by § 386 of the Act for the making of a motion to revoke the confirmation of a plan.

NOTES OF ADVISORY COMMITTEE ON RULES

With the changes, substitutions, and translations indicated in this rule and by Rule 11-2, Part IX of the Bankruptcy Rules (Rules 901-928 inclusive) applies in Chapter XI cases.

OFFICIAL CHAPTER XI FORMS

[Note. These official forms shall be observed and used, with such alterations as may be appropriate to suit the circumstances. See Bankruptcy Rule 909.]

Form	
11-F1.	Original Petition Under Chapter X.
11-F2.	Chapter XI Petition in Pending Case.
11-F3.	Verification on Behalf of a Corporation.
11-F4.	Verification on Behalf of a Partnership.
11-F5.	Schedules.
11-F6.	Statement of Affairs for Debtor Not Engaged in Business.
11-F7.	Statement of Affairs for Debtor Engaged in business.
11-F8.	Order Appointing Receiver or Disbursing Agent and Fixing the Amount of His Bond.
11-F9.	Notice to Receiver or Dispursing Agent of His Appointment.
11-F10.	Bond of Receiver or Disbursing Agent.
11-F11.	Order Approving Receiver's or Disbursing Agent's bond.
11-F12.	Certificate of Retention of Debtor in Possession.
11-F13.	Order for First Meeting of Creditors and Related Orders, Combined With Notice Thereof and of Automatic Stay.
11-F14.	Proof of Claim.
11-F15.	Proof of Claim for Wages, Salary, or Commissions.
11-F15A.	Proof of Multiple Claims for Wages, Salary, or Commissions.
11-F16.	Power of Attorney.
11-F17.	Order Fixing Time to Reject Modification of Plan Prior to Confirmation, Combined With Notice Thereof.
11-F18.	Order Confirming Plan.
11-F19.	Notice of Order of Confirmation of Plan and Discharge.

FORM NO. 11-F1.

ORIGINAL PETITION UNDER CHAPTER

United States District Court for the ______ District of ______

In re
_______________,
Debtor [*include here all names used by debtor within last 6 years*]
} Bankruptcy No____________

Original Petition Under Chapter XI

1. Petitioners' post-office address is_____________

2. Petitioner has resided [*or* has had his domicile *or* has had his principal place of business *or* if a partnership, or corporation, has had its principal

assets] within this district for the preceding 6 months [*or* for a longer portion of the preceding 6 months than in any other district].

3. No other case under the Bankruptcy Act initiated on a petition by or against petitioner is now pending.

4. Petitioner is qualified to file this petition and is entitled to the benefits of Chapter XI of the Act.

5. Petitioner is insolvent [*or* unable to pay his debts as they mature].

6. A copy of petitioner's proposed plan is attached [*or* petitioner intends to file a plan pursuant to Chapter XI of the Act].

7. [*If petitioner is a corporation*] Exhibit "A" is attached to and made part of this petition.

Wherefore petition prays for relief in accordance with Chapter XI of the Act.

Signed:______ ______
Attorney for Petitioner.
Address: ___________,
___________,

[*Petitioner signs if not represented by attorney.*]

______ ______,
Petitioner.

State of ________________ }
County of ______________ } ss.

I, ______ ______, the petitioner named in the foregoing petition, do hereby swear that the statements contained therein are true according to the best of my knowledge, information, and belief.

______ ______,
Petitioner.

Subscribed and sworn to before me on ______________________.

______ ______,
______ ______
[*Official character.*]

[*Unless the petition is accompanied by a list of all the debtor's creditors and their addresses, the petition must be accompanied by a schedule of his property, a statement of his affairs, and a statement of executory contracts, pursuant to Rule 11-11. These statements shall be submitted on official forms and verified under oath.*]

Exhibit "A"

[*If petitioner is a corporation, this Exhibit A shall be completed and attached to the petition pursuant to paragraph 7 thereof.*]

[*Caption, other than designation, as in Form No 11-F1.*]

FOR COURT USE ONLY

____
Date Petition Filed.

____
Case Number.

______ ______,
Bankruptcy Judge.

1. Petitioner's employer's identification number is _____________.

2. If any of the petitioner's securities are registered under section 12 of the Securities and Exchange Act of 1934, SEC file number is ____________.

3. The following financial data is the latest available information and refers to petitioner's condition on ____________.

a. Total assets: ____________ $_______ _______
b. Liabilities:
Secured debt, excluding that listed below — *Approximate number of holders*
Debt securities held by more than 100 holders:
____________________ $_______ _______
Secured _________ $_______ _______
Unsecured ________ $_______ _______
Other liabilities, excluding contingent or unliquidated claims ________ $_______ _______
Number of shares of common stock______ _______ _______
Comments if any:_____________________________
____
____

4. Brief description of petitioners' business: ____
____
____

5. The name of any person who directly or indirectly owns, controls, or holds, with power to vote, 25% or more of the voting securities of petitioner is ____

6. The names of all corporations 25% or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held, with power to vote, by petitioner____________________
____
____

NOTES OF ADVISORY COMMITTEE ON RULES

This form is a revision of former Official Form No. 48. Numerous changes have been made in the interest of eliminating unnecessary words and reducing the number of formal entries to be made by the petitioner.

Rule 11-9 requires the caption in which the name of the debtor is given to include all the names used by him within 6 years before the filing of the petition.

The recitals in paragraph 2 of the form, which establish the venue for the case, include the possibilities that are appropriate for most petitioners. Other factual bases for choice of venue under Rule 11-13(a) may be shown by minor adaptations of the form.

Attachment of a proposed plan to the petition is optional. See Rule 11-36.

Reference to the schedules and statements which are not part of the petition, are stricken from the body of the form, but a note at the foot of the form calls the petitioner's attention to the necessity of filing these papers as provided in Rule 11-11.

Blanks for the signature and address of the petitioner's attorney are added in conformity with Bankruptcy Rule 911(a) made applicable by Rule 11-63. Only the original need be signed and verified, but the copies should be conformed to the original. See Bankruptcy Rule 911(c). Verification of a petition on behalf of a corporation by an officer or agent, or of a petition on behalf of a partnership by a member or agent, shall conform to Official Form No. 4 or 5 of the Bankruptcy Forms, whichever is appropriate.

Exhibit "A" to be attached to the petition of a corporate debtor is for the purpose of supplying the Securities and Exchange Commission with the information it requires at the beginning stages of a Chapter XI case. See Rule 11-6 for requirement that a copy of a corporate petition be mailed to the SEC.

FORM NO. 11-F2. CHAPTER XI PETITION IN PENDING CASE

[*Caption, other than designation, as in Form No. 11-F1.*]

Chapter XI Petition in Pending Case

1. Petitioner's post-office address is ____________.

2. Petitioner is the bankrupt or debtor in Bankruptcy Case No. ____________, pending in this court.

3. Petitioner is qualified to file this petition and is entitled to the benefits of Chapter XI of the Bankruptcy Act.

4. Petitioner is insolvent [*or* unable to pay his debts as they mature.]

5. A copy of petitioner's proposed plan is attached [*or* petitioner intends to file a plan pursuant to Chapter XI of the Act.]

6. [*If petitioner is a corporation*] Exhibit "A" is attached to and made part of this petition.

Wherefore, petitioner prays for relief in accordance with Chapter XI of the Act.

Signed: ______ ______,
Attorney for Petitioner.
Address: ____________,
[*Petitioner signs if not represented by attorney.*]
______ ______,
Petitioner.

State of ________________ }
County of ________________ } ss.

I, ______ ______, the petitioner named in the foregoing petition, do hereby swear that the statements contained therein are true according to the best of my knowledge, information, and belief.

______ ______,
Petitioner.

Subscribed and sworn to before me on __________
______ ______
______ ______,
[*Official character.*]

[*Unless the schedules and statements have already been filed in the bankruptcy case they must be filed with this petition or within 15 days thereafter as provided in Rule 11-11. These statements shall be on official forms and verified under oath.*]

EXHIBIT "A"

[*Exhibit "A" as in Form No. 11-F1.*]

NOTES OF ADVISORY COMMITTEE ON RULES

This form is new. Save as indicated below it conforms to Official Form No. 11-F1 and the Note to that form should be consulted.

This petition contains no allegations as to venue, which will already have been made in the petition initiating the pending bankruptcy case. If venue is improper, Bankruptcy Rule 116(b) or Chapter XI Rule 11-13(b)(2) will apply.

Paragraph 2 of this form requires identification of the pending bankruptcy case.

The note at the foot of the form calls the petitioner's attention to the necessity of filing the statements and the schedules if they were not filed in the bankruptcy case, as provided in Rule 11-11.

Attachment of a proposed plan to the petition is optional.

Exhibit "A" may be found as an attachment to Form No. 11-F1 and is intended to supply the Securities and Exchange Commission with necessary information about a corporate debtor. See Rules 11-7 and 11-6 for requirement that a copy of a corporate petition be mailed to the SEC.

FORM NO. 11-F3. VERIFICATION ON BEHALF OF A CORPORATION

[*Form No. 4 of the Bankruptcy Forms is applicable and should be used.*]

NOTES OF ADVISORY COMMITTEE ON RULES

Rule 11-12 requires all petitions to be verified. Bankruptcy Form No. 4 is to be used for the verification on behalf of a corporation. It may be adapted for use in connection with other papers required by these rules to be verified. See Note to Bankruptcy Rule 911.

FORM NO. 11-F4. VERIFICATION ON BEHALF OF A PARTNERSHIP

[*Form No. 5 of the Bankruptcy Forms is applicable and should be used.*]

NOTES OF ADVISORY COMMITTEE ON RULES

Rule 11-12 requires all petitions to be verified. This form is to be used for the verification on behalf of a partnership. It may be adapted for use in connection with other papers required by these rules to be verified. See the Note to Bankruptcy Rule 911.

FORM NO. 11-F5. SCHEDULES

[*Form No. 6 of the Bankruptcy Forms is applicable and should be used. The word "bankruptcy" wherever used in Form No. 6 should be changed to "debtor."*]

NOTES OF ADVISORY COMMITTEE ON RULES

This form is a revision of the Official Forms for schedules A and B accompanying Official Form No. 1. It is intended for use by the debtor who is required to prepare a schedule of property and list of creditors to accompany a petition filed under the Act. See Rule 11-11.

The number of schedules for property has been reduced from 6 to 4 and the number of schedules of debts from 5 to 3 in the interest of simplification. No significant change in the information required to be disclosed is intended by this reduction. Numerous changes of format have been made to permit easier adaptability for individual cases, and columnar headings and categories of claims and property have been revised to make them more comprehensive and clear.

Ledger or voucher references and identification of places where debts were contracted or incurred are no longer required to be entered on the schedules of his debts. To eliminate an overlap of Schedule A-2 with Schedule B-1, which has required inclusion of information as to encumbrances on real property of the estate, the headings in the latter schedule have been revised to make clear that all statements regarding secured claims are to be entered in Schedule A-2. Liabilities on notes and bills heretofore supposed to be entered on Schedules A-4 and A-5 are to be included in Schedule A-3 or, if the creditor is entitled to priority or is secured, on Schedule A-1 or A-2, as the case may be. Elimation of Schedules A-4 and A-5 will effect little or no change in practice.

Schedule B-3, on which choses in action belonging to the estate have heretofore been scheduled, has been merged into Schedule B-2 for personal property, thereby eliminating a needless clasification. The space provided in Schedule B-4 for "Property in reversion, remainder, or expectancy, including property held in trust for the debtor or subject to any power or right to dispose of or to charge" has been eliminated, and such property should be included as real property on Schedule B-1 or as personal property on Schedule B-2. Information as to fees paid counsel in contemplation of the filing of a petition heretofore also required to be included in Schedule B-4, is to be obtained by questions included in the Statement of Affairs.

The official forms for the schedules have heretofore required a signature on each of the 11 schedules (A-1 to A-5 and B-1 to B-6) and an oath to accompany the Schedule of Debts as well as another to accompany the Schedule of Property. Schedules are required to be executed and filed in the same number as the petition they accompany. Rule 11-11(a). A single oath for all the schedules requiring no more than one signature by the debtor for the original has been substituted for the multiple subscription requirements heretofore imposed. The oath requires a specification of a number of sheets included in the schedules and an acknowledgment that the affiant has read them. The copies should be conformed to the original as provided in Bankruptcy Rule 911(c). Separate forms of oath are provided for individuals, corporations, and partnerships.

FORM NO. 11-F6. STATEMENT OF AFFAIRS FOR DEBTOR NOT ENGAGED IN BUSINESS

[*Form No. 7 of the Bankruptcy Forms is applicable and should be used. The word "bankruptcy" wherever used in Form No. 7 should be changed to "debtor."*]

NOTES OF ADVISORY COMMITTEE ON RULES

This Statement of Affairs is a revision of Official Form No. 2. Most of the changes are intended to make the requests for information more specific and certain in their references. Thus, the debtor is required to give his social security number to facilitate his identification, particularly by the Internal Revenue Service and other agencies which maintain records by reference to this number. Information as to other names used in the last 6 years serves a similar purpose.

Inquiry as to most transactions and developments affecting the financial condition of the debtor is limited to the year preceding the filing of the petition, and the time span covered by the question regarding general assignments and other modes of general settlement with creditors (formerly #7c, renumbered as #8b) has been reduced from 2 years to one year. The scope of examination at the first meeting or at any other meeting is in no way restricted, of course, by the scope of the inquiries in the Statement of Affairs.

New questions have been added concerning tax refunds (#3), property in the hands of trustees, bailees, and other third persons (#9), repossessions and returns of property by the debtor (#13), losses covered by insurance (#14), and payments or transfers to attorneys (#15). The questions asked in this last paragraph seek information relevant to the examination authorized to be conducted by the court pursuant to Rule 11-32. The reference to sums paid to counsel heretofore included in Schedule B-4 is deleted by this series of proposals.

The questions regarding transfers (formerly #10a, now #12a & b) has literally required the debtor to disclose every payment as well as exchange of property during the preceding year. The question has been revised to develop information only as to (1) gifts that exceed the bounds of ordinary and usual presents to family members and charitable contributions, and (2) transfers of realty or tangible personalty. The range of inquiry covers the year before the filing of the petition as before, but no accounting is required by the question as to payments of cash and by check except when out-of-the-ordinary gifts are affected this way.

Inquiry is made as to prevent writings in numerous instances. Schedule B-6 on which all books, papers, and writings, have heretofore been listed has been deleted.

The debtor is required to sign only the oath to the statement, but he must verify that he has read the statement as well as that it is true to the best of his knowledge, information, and belief. Only the original need be verified, but the copies must be conformed to the original. See Bankruptcy Rule 911(c). When the schedules and statement of affairs are filed simultaneously, as they ordinarily will be (see Rule 11-11), the oaths may be combined, as provided in Bankruptcy Rule 909.

FORM NO. 11-F7. STATEMENT OF AFFAIRS FOR DEBTOR ENGAGED IN BUSINESS

[*Form No. 8 of the Bankruptcy Forms is applicable and should be used. The word "bankrupt" wherever used in Form No. 8 should be changed to "debtor."*]

NOTES OF ADVISORY COMMITTEE ON RULES

This is a revision of Official Form No. 3. Most of the changes made in the form are identical or similar to those made in Official Form No. 2 and explained in the note accompanying the Statement of Affairs for a Debtor Not Engaged in Business.

The inquiry regarding tax returns (#6a) extends back 3 years before the filing of the petition because of the possible relevance of the returns for all 3 years in determining the tax liability of a business debtor for the year in which the petition is filed.

The inclusion of the questions regarding suits, executions, and attachments (#12) cures a *casus omissus* in Official Form No. 3.

The question regarding loans repaid (#13) has been extended to cover payments on installment credit sales of goods and services. The purpose of this question is to develop information regarding possible preferences, and the Statement of Affairs is incomplete in this respect if it refers only to repayments of loans.

Information regarding business leases (#17) will be helpful in determining whether rental arrangements should be terminated or extended and whether the landlord may have a basis for asserting a lien or priority or may be liable for the return of a deposit to the estate.

The question regarding withdrawals (formerly #14, renumbered #19) has been elaborated to get information from individual proprietors comparable to that heretofore sought from partnerships and corporate debtors. This information will supplement that obtained pursuant to the question regarding nonbusiness income (#5), payment of loan (#13), and other kinds of transfers in providing a picture of the disposition of assets during the year preceding the filing of the petition.

The question regarding the membership and management of a partnership or corporation (formerly #15, now 21) has been elaborated to develop information regarding significant changes during the year prior to the filing of the petition. Such information is likely to be of considerable assistance in discovering the reasons for the stringent financial condition of the debtor and in determining the disposition of its assets during the year preceding the filing of the petition.

The debtor is required to sign only the oath to the statement, but he must verify that he has read the statement as well as that it is true to the best of his knowledge, information, and belief. When the schedules and statement of affairs are filed simultaneously, as they ordinarily will be (see Rule 11-11), the oaths may be combined, as provided in Bankruptcy Rule 909. Only the original need be signed and verified, but the copies must be conformed to the original. (See Bankruptcy Rule 911(c)). Bankruptcy Rules 909 and 911 are made applicable in Chapter XI cases by Rule 11-63.

FORM NO. 11-F8. ORDER APPOINTING RECEIVER OR DISBURSING AGENT AND FIXING THE AMOUNT OF HIS BOND

[*Caption, other than designation, as in Form No. 11-F1.*]

Order Appointing Receiver [or Disbursing Agent] and Fixing the Amount of His Bond

1. ______ ______, of *___________ is hereby appointed receiver of the estate [*or* disbursing agent for the estate] of the above-named debtor.

2. The amount of the bond of the receiver [*or* disbursing agent] is fixed at $______.

Dated: ____________.

______ ______,
Bankruptcy Judge.

* State post-office address.

NOTES OF ADVISORY COMMITTEE ON RULES

This form is a revision of Official Form No. 20. With respect to the appointment of the disbursing agent, this form is new.

FORM NO. 11-F9. NOTICE TO RECEIVER OR DISBURSING AGENT OF HIS APPOINTMENT

[*Caption, other than designation, as in Form No. 11-F1.*]

Notice to Receiver [or Disbursing Agent] of His Appointment To ____________, of *____________.

You are hereby notified of your appointment as receiver of the estate [*or* disbursing agent for the estate] of the above-named debtor. The amount of your bond has been fixed at $______.

[*The following paragraph is applicable to receiver only.*]

You are required to notify the undersigned forthwith of your acceptance or rejection of the office of receiver.

Dated: ____________.

______ ______,
Bankruptcy Judge.

*State post-office address.

NOTES OF ADVISORY COMMITTEE ON RULES

This form is a revision of Official Form No. 22. It is to be used in giving the notice to a receiver required by Rule 11-18(c). While there is no requirement that a disbursing agent be notified of his appointment, this form is adopted for such use.

FORM NO. 11-F10. BOND OF RECEIVER OR DISBURSING AGENT

[*Caption, other than designation, as in Form No. 11-F1.*]

Bond of Receiver [or Disbursing Agent]

We, ____,
of *____________, as principal, and ______________
____
of *____________, as surety, bind ourselves to the United States in the sum of $______ for the faithful performance by the undersigned principal of his official duties as receiver of the estate [*or* disbursing agent for the estate] of the above-named debtor.

Dated: ____________.

______ ______,
____

* State post-office address.

NOTES OF ADVISORY COMMITTEE ON RULES

This form is a simplification of former Official Form No. 23. It may be used in an individual case under Rule 11-20, or, by modification of the caption, the reference in the bond to the debtor, and, where necessary, the reference to the principal, it may be adapted for use in a series of cases when a blanket bond is given. Unless otherwise provided by local rule, the completed bond is to be filed with the referee in accordance with Rule 11-20.

FORM NO. 11-F11. ORDER APPROVING RECEIVER'S OR DISBURSING AGENT'S BOND

[*Caption, other than designation, as in Form No. 11-F1.*]

Order Approving Receiver's [or Disbursing Agent's] Bond

The bond filed by ______________________________ of *______________ as receiver of the estate [*or* disbursing agent for the estate] of the above-named debtor is hereby approved.

Dated: ____________.

______ ______,
Bankruptcy Judge.

*State post-office address.

NOTES OF ADVISORY COMMITTEE ON RULES

Rule 11-20(a) authorizes the court to approve other security than a bond but recordation of an order approving other security would not come within the scope of § 21g. A copy of the petition may be recorded pursuant to § 21g, however.

FORM NO. 11-F12. CERTIFICATE OF RETENTION OF DEBTOR IN POSSESSION

[*Caption, other than designation, as in Form No. 11-F1.*]

Certificate of Retention of Debtor in Possession

I hereby certify that the above-named debtor continues in possession of his [its] estate as debtor in possession, no trustee in bankruptcy or receiver having been appointed or qualified.

Dated: ____________.

______ ______,
Bankruptcy Judge.

NOTES OF ADVISORY COMMITTEE ON RULES

Under Rule 11-18 (a) and (b) the trustee in bankruptcy continues in charge of the debtor's estate if the Chapter XI petition is filed in a pending bankruptcy case after such trustee has qualified; otherwise, the debtor is to continue in possession except that, for cause, the court may appoint a receiver. Where the debtor continues in possession, there need be no formal order to that effect. Accordingly, where evidence is required this certificate may be used pursuant to Rule 11-20(c). A copy of this certificate is not, however, within the purview of § 21g of the Act for purposes of recordation and in such cases a copy of the petition itself should be recorded.

FORM NO. 11-F13. ORDER FOR FIRST MEETING OF CREDITORS AND RELATED ORDERS, COMBINED WITH NOTICE THEREOF AND OF AUTOMATIC STAY

[*Caption, other than designation, as in Form No. 11-F1.*]

Order for First Meeting of Creditors Combined With Notice Thereof and of Automatic Stay

To the debtor, his creditors, and other parties in interest: ___________ of *___________, having filed a petition on ______ stating that he desires to effect a plan under Chapter XI of the Bankruptcy Act, it is ordered, and notice is hereby given, that:

1. The first meeting of creditors shall be held at ___________, on ___________ at ______ o'clock ____m.;

2. The debtor shall appear in person [*or, if the debtor is a partnership,* by a general partner, *or, if the debtor is a corporation,* by its president or other executive officer] before the court at that time and place for the purpose of being examined;

3. The hearing on confirmation of the plan shall be held at a date to be later fixed [*or* at a date to be fixed at the first meeting *or* at ___________ on ___________ at ___________ or immediately following the conclusion of the first meeting].

4. Creditors may file written objections to confirmation at any time prior to confirmation [*or* ___________ is fixed as the last day for the filing of

objections to confirmation, *or* objections to confirmation may be filed by a date to be later fixed.]

You are further notified that:

The meeting may be continued or adjourned from time to time by order made in open court, without further written notice to creditors.

At the meeting the creditors may file their claims and acceptances of the plan, elect a standby trustee, elect a committee of creditors, examine the debtor as permitted by the court, and transact such other business as may properly come before the meeting.

The filing of the petition by the debtor above named operates as a stay of the commencement or continuation of any court or other proceeding against the debtor, of the enforcement of any judgment against him, of any act or the commencement or continuation of any court proceeding to enforce any lien on the property of the debtor, and of any court proceeding commenced for the purpose of rehabilitation of the debtor or the liquidation of his estate, as provided by Rule 11–44.

In order to have his claim allowed so that he may share in any distribution under a confirmed plan, a creditor must file a claim, whether or not he is included in the schedule of creditors filed by the debtor. Claims which are not filed before confirmation of the plan will not be allowed except as otherwise provided by law. A claim may be filed in the office of the undersigned bankruptcy judge on an official form prescribed for a proof of claim.

[*If appropriate*] ____________ of *____________ has been appointed receiver of the estate of the above-named debtor.

Dated: ____________.

______ ______,
Bankruptcy Judge.

* State post-office address.

NOTES OF ADVISORY COMMITTEE ON RULES

Insofar as this form embodies an order, it is new. Insofar as it embodies a notice, it revises former Official Form No. 49.

As provided in Rules 11–36 and 11–37, acceptances may be obtained by the debtor before or after the filing of the petition and may be filed by him with the court on behalf of the accepting creditor. A copy of the plan, if any, filed by the debtor should be attached to this combined order and notice.

The inclusion in the official form of information regarding the effect of the Chapter XI petition as a stay, the time to file objections to confirmation, and the necessity of the filing of claims is new. It should be helpful to creditors and reduce the number of inquiries directed at referees' offices by recipients of the notice of the first meeting.

In unusual cases when the court fixes, at an early time, the date by which complaints to determine the dischargeability of debts must be filed, the date so fixed can be added to this form.

FORM NO. 11–F14. PROOF OF CLAIM

[*Form No. 15 of the Bankruptcy Forms is applicable and should be used. The word "bankrupt" wherever used in Form No. 15 should be changed to "debtor."*]

NOTES OF ADVISORY COMMITTEE ON RULES

This form combines the functions of Official Form Nos 28, 29, 30 and 31. It may be used by any claimant, including a wage earner for whom short forms have been specially provided (Forms No. 11–F15 and 11–F15A), or by an agent or attorney for any claimant. Such a combined form is commonly used in practice.

In order to facilitate confirmation of the plan and distribution to creditors, paragraph 9 also requires that any written security agreement (if not included in the writing upon which the claim is founded, which is required by paragraph 4 to be attached) be attached to the proof of claim or that the reasons why it cannot be attached be set forth. Paragraph 9 further requires an indication of the date and the office or offices in which notice of the security interest has been filed or recorded. The information so required will expedite determination of the validity and perfection of security interests. Satisfactory evidence of perfection, which is to accompany the proof of claim, would include a duplicate of an instrument filed or recorded together with an indication of the date or dates when and the office or offices where filed or recorded, a duplicate of a certificate of title when a security interest is perfected by notation on such a certificate, a statement that pledged property has been in the possession of the secured party since a specified date, or a statement of the reasons why no action was necessary for perfection.

Paragraph 10, requiring explicitness as to whether the claim is filed as a general, priority, or secured claim, will also facilitate administration and minimize troublesome litigation over the question whether a proof of claim was intended as a waiver of security. See *e.g. United States, National Bank* v. *Chase National Bank*, 331 U.S. 28, 35–36 (1947); 3 Collier ¶ 57.07 [3.1] (1961).

FORM NO. 11–F15. PROOF OF CLAIM FOR WAGES, SALARY, OR COMMISSIONS

[*Form No. 16 of the Bankruptcy Forms is applicable and should be used. The word "bankrupt" wherever used in Form No. 16 should be changed to "debtor."*]

NOTES OF ADVISORY COMMITTEE ON RULES

This form is new. It is an adaptation of Official Form No. 11–F14 for the use of claimants for personal earnings in Chapter XI cases. Its limited purpose permits elimination of recitals that are appropriate for other classes of claimants. Most claimants using the form will be entitled to priority under § 64a(2) of the Act. If the claim as filed includes an amount not entitled to priority because, for example, not earned within the 3-month period immediately preceding the filing of the petition, reference to payroll records will ordinarily permit determination of the amount of the priority, if any, to which the claimant is entitled. If such records are unavailable, the claimant may be required to supply additional information as a condition to allowance of the claim with priority.

FORM NO. 11–F15A. PROOF OF MULTIPLE CLAIMS FOR WAGES, SALARY, OR COMMISSIONS

[*Form No. 16A of the Bankruptcy Forms is applicable and should be used. The word "bankrupt" wherever used in Form No. 16A should be changed to "debtor."*]

FORM NO. 11–F16. POWER OF ATTORNEY

[*Caption, other than designation, as in Form No. 11–F1.*]

Power of Attorney

To ____________ of* ____________, and ____________ of* ____________:

The undersigned claimant hereby authorizes you, or any one of you, as attorney in fact for the undersigned and with full power of substitution, to receive distributions and in general to perform any act not constituting the practice of law for the undersigned in all matters arising in this case.

Dated: ____________.

Signed: ____________
By: ____________
[*If appropriate*] as ____________
Address: ____________,

[*If executed by an individual*] Acknowledged before me on ____________.

[*If executed on behalf of a partnership*] Acknowledged before me on ____________, by ____________, who says that he is a member of the partnership named above and is authorized to execute this power of attorney in its behalf.

[*If executed on behalf of a corporation*] Acknowledged before me on ____________, by ____________, who says that he is ____________ of the corporation named above and is authorized to execute this power of attorney in its behalf.

____________,
____
[*Official character*]

* State post-office address.

NOTES OF ADVISORY COMMITTEE ON RULES

Bankruptcy Rule 910(c), made applicable by Rule 11–63, requires a power of attorney to be prepared substantially in conformity with this form, but it may grant either more or less authority in accordance with the language used.

While a power of attorney may of course be executed in favor of an attorney at law who is also retained as such to represent the creditor executing the form, the power of attorney does not purport to confer the right to act as an attorney at law. The corollary is that one not an attorney may act under a power of attorney within the limitations prescribed in the form.

While Bankruptcy Rule 910(c) as modified by Rule 11–63(3) does not require a written power of attorney for the purpose of filing a proof of claim or voting on a plan, Official Form No. 11–15 requires a partner, corporate officer or other agent filing a proof of claim to state that he is authorized to file the claim. The power contained in this form is broad enough to include authority to vote for a creditors' committee and in the election of a trustee.

The statement respecting authority required in the acknowledgement accompanying a power of attorney executed on behalf of a partnership or corporation is in lieu of the requirement of General Order 21(5) heretofore existing that such an instrument be accompanied by an oath that the person executing is a member of the partnership or a duly authorized officer of the corporation.

FORM NO. 11–F17. ORDER FIXING TIME TO REJECT MODIFICATION OF PLAN PRIOR TO CONFIRMATION, COMBINED WITH NOTICE THEREOF

[*Caption, other than designation, as in Form No. 11–F1.*]

Order Fixing Time to Reject Modification of Plan Prior to Confirmation, Combined With Notice Thereof

To the debtor, his creditors and other parties in interest:

The debtor having filed a modification of his plan on ____________, it is ordered, and notice is hereby given, that:

1. ____________ is fixed as the last day for filing a written rejection of the modification.

2. A copy [*or* a summary] of the modification is attached hereto. Any creditor who has accepted the plan and who fails to file a written rejection of the modification within the time above specified shall be deemed to have accepted the plan as modified.

Dated: ____________.

____________,
Bankruptcy Judge.

NOTES OF ADVISORY COMMITTEE ON RULES

This form, which is new, combines the order and notice provided for by Rule 11–39 where the debtor proposes a modification of a plan prior to confirmation.

FORM NO. 11–F18. ORDER CONFIRMING PLAN

[*Caption, other than designation, as in Form No. 11–F1.*]

Order Confirming Plan

The debtor's plan filed on ____________, [*if appropriate,* as modified by a modification filed on ____________,] having been transmitted to creditors; and

The deposit required by Chapter XI of the Bankruptcy Act having been made; and

It having been determined after hearing on notice:

1. That the plan has been accepted in writing by the creditors whose acceptance is required by law [*or* by all creditors affected thereby]; and

2. That the plan has been proposed and its acceptance procured in good faith, and not by any means, promises, or acts forbidden by law [*and, if the plan is accepted by less than all affected creditors,* the provisions of Chapter XI of the Act have been complied with, the plan is for the best interests of the creditors and is feasible, the debtor has not been guilty of any of the acts or failed to perform any of the duties which would be a bar to the discharge of a bankrupt];

It is ordered that:

A. The debtor's plan filed on ____________, a copy of which is attached hereto, is confirmed.

B. Except as otherwise provided or permitted by the plan or this order:

(1) The above-named debtor is released from all dischargeable debts;

(2) Any judgment heretofore or hereafter obtained in any court other than this court is null and void as a determination of the personal liability of the debtor with respect to any of the following:

(a) debts dischargeable under § 17a and b of the Act;

(b) [*if the court has fixed a time for the filing of complaints under* § *17c(2) of the Act pursuant to Rule 11–48*] unless heretofore or hereafter determined by order of this court to be nondischargeable debts alleged to be excepted from discharge under clauses (2) and (4) of § 17a of the Act;

(c) [*if the court has fixed a time for the filing of complaints under* § *17c(2) of the Act pursuant to Rule 11–48*] unless heretofore or hereafter determined by order of this court to be nondischargeable, debts alleged to be excepted from discharge under clause (8) of § 17a of the Act, except those debts on which there was an action pending on ____________, the date when the first petition was filed initiating a case under the Act, in which a right to jury trial existed and a party has either made a timely demand therefor or has submitted to this court a signed statement of intention to make such a demand;

(d) debts determined by this court to be discharged under § 17c(3) of the Act.

C. All creditors whose debts are discharged by this order and all creditors having claims of a type referred to in paragraph (B)(2) above are enjoined from instituting or continuing any action or employing any process to collect such debts as personal liabilities of the above-named debtor.

Dated: ____________.

______ ______,
Bankruptcy Judge.

NOTES OF ADVISORY COMMITTEE ON RULES

This form combines and revises former Official Forms Nos. 51 and 52 to comply with Rule 11-43, and to take account of the 1970 amendments which added §§ 14f, 17b, and 17c and amended § 17a of the Act. Under § 371 confirmation of a plan operates to release the debtor from his dischargeable debts except as the plan or order confirming it may provide otherwise. This form thus includes the order of discharge. Notice of the order of confirmation and order of discharge is provided for on a separate form which is more easily transmitted to creditors. The court may, however, combine the two forms and provide for the notice in this form.

This form may be used whether a plan has been accepted by all affected creditors or less than all affected creditors.

FORM NO. 11-F19. NOTICE OF ORDER OF CONFIRMATION OF PLAN AND DISCHARGE

[*Caption, other than designation, as in Form No. 11-F1.*]

Notice of Order of Confirmation of Plan and Discharge

To the debtor, his creditors, and other parties in interest:

Notice is hereby given of the entry of an order of this court on ____________, confirming the debtor's plan dated ____________ and providing further that:

A. Except as otherwise provided or permitted by the plan or such order:

(1) The above-named debtor is released from all dischargeable debts;

(2) Any judgment theretofore or thereafter obtained in any court other than this court is null and void as a determination of the personal liability of the debtor with respect to any of the following:

(a) debts dischargeable under § 17a and b of the Bankruptcy Act;

(b) [*if the court has fixed a time for the filing of complaints under § 17c(2) of the Act pursuant to Rule 11-48*] unless theretofore or thereafter determined by order of this court to be nondischargeable, debts alleged to be excepted from discharge under clauses (2) and (4) of § 17a of the Act;

(c) [*if the court has fixed a time for the filing of complaints under § 17c(2) of the Act pursuant to Rule 11-48*] unless theretofore or thereafter determined by order of this court to be nondischargeable, debts alleged to be executed from discharge under clause (8) of § 17a of the Act, except those debts on which there was an action pending on ______ ______, the date when the first petition was filed initiating a case under the Act, in which a right to jury trial existed and a party has either made a timely demand therefore or has submitted to this court a signed statement of intention to make such a demand;

(d) debts determined by this court to be discharged under § 17c(3) of the Act.

B. All creditors whose debts are discharged by said order and all creditors having claims of a type referred to in paragraph (A)(2) above are enjoined from instituting or continuing any action or employing any process to collect such debts as personal liabilities of the above-named debtor.

Dated: ____________.

______ ______,
Bankruptcy Judge.

NOTES OF ADVISORY COMMITTEE ON RULES

This form is new. It is to be used to notify creditors of the entry of the order of confirmation and is to be mailed within 30 days thereof pursuant to Rules 11-38 and 11-43. Additionally, the notice informs the creditors of the discharge provisions of § 14f of the Act, particularly those enjoining suits on discharged debts. While this form is separate from the confirmation order, Form No. 11-F18, the order and notice may be combined in one form if the court so desires.

TITLE VI.—CHAPTER XII RULES

Rule
12-1. Scope of Chapter XII Rules and Forms; Short Title.
12-2. Meanings of Words in the Bankruptcy Rules When Applicable in a Chapter XII Case.
12-3. Commencement of Chapter XII Case.
12-4. Chapter XII Cases Originally Commenced under another Chapter of the Act.
12-5. Reference of Cases; Withdrawal of Reference and Assignment.
12-6. Original Petition.
12-7. Petition in Pending Case.
12-8. Partnership Petition.
12-9. Caption of Petition.
12-10. Filing Fees.
12-11. Schedules, Statement of Affairs, and Statement of Executory Contracts.
12-12. Verification and Amendment of Petition and Accompanying Papers.
12-13. Venue and Transfer.
12-14. Joint Administration of Cases Pending in Same Court.
Rule
12-15. Death or Insanity of Debtor.
12-16. Debtor Involved in Foreign Proceeding.
12-17. Appointment of Trustee; Continuance of Debtor in Possession; Removal.
12-18. Trustee for Estates When Joint Administration Ordered.
12-19. Qualification by Trustee and Disbursing Agent; Indemnity; Bonds; Evidence.
12-20. Limitation on Appointment of Trustees.
12-21. Employment of Attorneys and Accountants.
12-22. Authorization of Trustee or Debtor in Possession to Conduct Business of Debtor.
12-23. Notice to Parties in Interest and the United States.
12-24. Meeting of Creditors.
12-25. Representation of Creditors.
12-26. Examination.
12-27. Duty of Trustee or Debtor in Possession to Keep Records, Make Reports, and Furnish Information.

Rule
12–28. Compensation for Services and Reimbursement of Expenses.
12–29. Examination of Debtor's Transactions with His Attorney.
12–30. Proof of Claim.
12–31. Classification of Claim; Valuation of Security.
12–32. Claim by Codebtor.
12–33. Post-Petition Tax Claims.
12–34. Withdrawal of Claim.
12–35. Distribution; Undistributed Consideration; Unclaimed Funds.
12–36. Filing of Plan; Transmission to Creditors; Adjourned Meeting.
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OFFICIAL CHAPTER XII FORMS

Rule 12–1. Scope of Chapter XII Rules and Forms; Short Title.

The rules and forms in this Title VI govern the procedure in courts of bankruptcy in cases under Chapter XII of the Bankruptcy Act. These rules may be known and cited as the Chapter XII Rules. These forms may be known and cited as the Official Chapter XII Forms.

Notes of Advisory Committee on Rules

A "Chapter XII case," as defined in Rule 12–3, is one wherein a petition has been filed by a person seeking relief under Chapter XII of the Bankruptcy Act. The case includes all of the proceedings and matters which arise in connection with the case and of which the court of bankruptcy is given jurisdiction under Chapter XII and incorporated provisions of Chapters I–VII of the Act. See § 402. These rules and forms thus do not apply to a case initiated under Chapters I–VII of the Act unless a Chapter XII petition is filed in a pending bankruptcy case pursuant to Rule 12–7, nor to a case initiated under other debtor-relief chapters (VIII–XI, XIII). Nor do these rules prescribe except incidentally the practice for actions or "plenary proceedings" brought in state courts or federal district courts to determine controversies that arise in connection with a Chapter XII case.

"Courts of bankruptcy" are defined in § 1(10) of the Bankruptcy Act, 11 U.S.C. § 1(10), to "include the United States district courts and the district courts of the Territories and possessions to which this Act is or may hereafter be applicable." (References to the Bankruptcy Act hereinafter will be to the Act and will omit citations to Title 11 of the United States Code.) The courts of bankruptcy clearly include the district courts of Guam and the Virgin Islands. 1 Collier, Bankruptcy ¶ 1.10 at 71–72 n. 22 (14th ed. rev. 1968), citing relevant statutory provisions. (Hereinafter citations to the Collier treatise will omit the title and references to the edition but will include the date of the revision of the cited material.) It is problematical whether the District Court for the District of the Canal Zone is a bankruptcy court, but it appears that the court has not undertaken to act as a court of bankruptcy. 1 Collier, *supra* at 72.

Rule 12–2. Meanings of Words in the Bankruptcy Rules When Applicable in a Chapter XII Case.

The following words and phrases used in the Bankruptcy Rules made applicable in Chapter XII cases by these rules have the meanings herein indicated, unless they are inconsistent with the context:

(1) "Bankrupt" means "debtor."

(2) Bankruptcy" or "bankruptcy case" means "Chapter XII case."

(3) "Receiver," "trustee," "receiver in bankruptcy," or "trustee in bankruptcy" means the "trustee" or "debtor continued in possession" in the Chapter XII case.

Notes of Advisory Committee on Rules

These rules make many of the Bankruptcy Rules applicable in Chapter XII cases or in proceedings therein, and this rule indicates the substitution or translation of certain terms that is necessary for this purpose.

Rule 12–3. Commencement of Chapter XII Case.

(a) Method of Commencement.

A Chapter XII case is commenced by the filing of a petition with the court by a person seeking relief under Chapter XII of the Act.

(b) When Case May Be Commenced.

The petition under Chapter XII may be an original petition or it may be filed in a case pending under another chapter of the Act.

Notes of Advisory Committee on Rules

This rule prescribes the mode for beginning a Chapter XII case, whether by filing an original petition or a petition in a case pending under another chapter of the Act. Original petitions are governed by Rule 12–6 and petitions in pending cases by Rule 12–7 which are derived from §§ 421 and 422 of the Act. While § 421 refers only to the filing of a Chapter XII petition in a pending bankruptcy case, subdivision (b) of this rule makes explicit that the pending case may be, additionally, a Chapter XI case or a Chapter XIII case. See also Rule 12–7. It would not be possible for the pending case to be a Chapter X case because Chapter X is limited to corporate debtors and Chapter XII to noncorporate debtors. A proceeding initiated by a petition is designated a "Chapter XII case" for the purposes of these rules. The term embraces all the controversies determinable by the court of bankruptcy and all the matters of administration arising during the pendency of the case. The word "proceeding" as used in these rules generally refers to a litigated matter arising within a case during the course of administration. See particularly Bankruptcy Rule 703, made applicable by Rule 12–60. The rule assumes the continuing applicability of the definition of petition in §§ 1(24) and

406(9) of the Act but, as used in these rules, the word refers to the document commencing a Chapter XII case. The place of filing a petition is more fully particularized in Bankruptcy Rule 509 made applicable by Rule 12-59.

Rule 12-4. Chapter XII Cases Originally Commenced Under Another Chapter of the Act.

When a case commenced under another chapter of the Act proceeds under Chapter XII, the Chapter XII case shall be deemed to have been originally commenced as of the date of the filing of the first petition initiating a case under the Act.

Notes of Advisory Committee on Rules

The purpose of this rule is to protect those rights that develop upon the filing of a petition commencing any case for relief under the Bankruptcy Act. The first case may have been a bankruptcy case, Chapter XI or Chapter XIII case which was then transferred to Chapter XII by petition. See Rules 12-3 and 12-7. This rule is not intended to invalidate any action taken in the superseded case before it was converted to a Chapter XII case.

Rule 12-5. Reference of Cases; Withdrawal of Reference and Assignment.

Bankruptcy Rule 102 applies in Chapter XII cases.

Notes of Advisory Committee on Rules

This rule represents a departure from current procedure prescribed by the Act which, in § 431, provides that the judge may refer a proceeding to a referee. Bankruptcy Rule 102 provides for automatic reference which would be for all purposes of the case. Bankruptcy Rule 102 contains a reference to Bankruptcy Rule 115(b) which, because it deals with involuntary petitions, is inapplicable in Chapter XII cases. That cross reference would, therefore, also be inapplicable.

Rule 12-6. Original Petition.

An original petition under Chapter XII of the Act shall conform substantially to Official Form No. 12-F1. An original and 4 copies of the petition shall be filed, unless a different number of copies is required by local rule. The clerk shall transmit one copy to the District Director of Internal Revenue for the district in which the case is filed, and one copy to the Secretary of the Treasury.

Notes of Advisory Committee on Rules

Official Form No. 12-F1 (Original Petition under Chapter XII), has been simplified and shortened but retains the essential features of the official form for a debtor's petition promulgated under former § 30 of the Act. Although no copy of this petition is required to be served on any adverse party, the rule continues the requirement of § 59c of the Act that three copies be filed for court purposes although the petition need not be filed in triplicate original. The rule incorporates the requirements of § 519 and General Order 54(3) with respect to transmittal of copies of the petition to the Secretary of the Treasury and the District Director of Internal Revenue. Additionally, note should be taken of local rules to determine whether or not any additional copies must be filed.

As provided in Rule 12-43, the filing of the petition acts as a stay of other proceedings against the debtor.

Only the original need be signed and verified but the copies must be conformed to the original. See Bankruptcy Rule 911(c). The petition must be filed with the clerk as provided in Bankruptcy Rule 509(a).

Rule 12-7. Petition in Pending Case.

If a case under another chapter of the Act is pending by or against the debtor, any petition under Chapter XII shall be filed therein and may be filed before or after adjudication. Such petition shall conform substantially to Official Form No. 12-F2. The number and distribution of copies shall be as specified in Rule 12-6. The filing of the petition shall act as a stay of adjudication and of administration of an estate in bankruptcy. The court may, for cause shown, terminate, annul, modify, or condition the stay.

Notes of Advisory Committee on Rules

Official Form No. 12-F2 (Chapter XII Petition in Pending Case) is new. It is designed for use where a case is pending on a petition by or against the debtor under another chapter of the Act, and must be filed with the court in which the other case is pending. The other pending case may be a bankruptcy, Chapter XI, or Chapter XIII case. See Rules 12-3 and 12-13(a). Although no copy of the petition is required to be served on any adverse party, the rule continues the requirement of § 59c of the Act that the court have 3 copies of the petition. See Rule 12-6.

Although Bankruptcy Rule 509 specifies that the petition is to be filed with the clerk, the petition under this rule in a pending case should be filed with the referee because it is being filed after reference. The court should transmit the copies of the petition as provided in Rule 12-6.

This rule permits filing a Chapter XII petition in a pending bankruptcy case after adjudication, differing from § 421 of the Act which allows such a petition only before adjudication.

The rule changes the thrust of § 425 of the Act by staying automatically the adjudication or administration of the estate in a bankruptcy case rather than rendering it discretionary with the court to order a stay. This stay, however, does not operate to impede the operation or administration of a pending Chapter XI or Chapter XII case. A specific order in the Chapter XII case would be necessary for that purpose. The administration of an estate in bankruptcy referred to in the rule means a straight bankruptcy case for liquidation under Chapters I-VII of the Act. As provided in Rule 12-43 the filing of the petition also acts as a stay of most other proceedings against the petitioner. For cause shown, however, the automatic stay may be terminated, modified, etc., as may be necessary in a particular case, and some actions in the pending case may be permitted, such as a sale of property where it would be improvident to halt the sale by the mere filing of the Chapter XII petition.

Only the original need be signed and verified but the copies must be conformed to the original. See Bankruptcy Rule 911(c).

Rule 12-8. Partnership Petition.

A petition may be filed pursuant to Rule 12-6 or 12-7 by all the general partners on behalf of the partnership.

Notes of Advisory Committee on Rules

A partnership as such is a debtor capable of being bankrupt under § 4 of the Act and thus is entitled to the benefit of Chapter XII pursuant to § 406(6). There is some question within the Act whether or not a partnership petition may proprely be filed by less than all of the general partners. Under § 5 of the Act and Bankruptcy Rule 105 a petition commencing a bankruptcy case may be filed by less than all of the general partners. This procedure, however, is more akin to an involuntary petition, requiring service of the petition on nonassenting partners and a hearing on adjudication, which is inconsistent with the voluntary nature of a Chapter XII case for arrangement. This rule requires a petition on behalf of a partnership to be filed by all of the general partners. This does not mean, necessarily, that all of the general partners physically execute the petition. While all must consent to the petition, less than all may execute the petition which would be on behalf of all. See 9 Collier ¶4.02 (1963).

Rule 12-9. Caption of Petition.

Bankruptcy Rule 106 applies in Chapter XII cases.

NOTES OF ADVISORY COMMITTEE ON RULES

The last sentence of Bankruptcy Rule 106 has reference to involuntary petitions and would therefore not be applicable in a Chapter XII case.

Rule 12-10. Filing Fees.

Every petition filed pursuant to Rule 12-6 shall be accompanied by the prescribed filing fees.

NOTES OF ADVISORY COMMITTEE ON RULES

Filing fees for Chapter XII cases are prescribed by § 424(2) which incorporates §§ 40c(1), 48c and 52a of the Act. Additional charges may be prescribed in accordance with schedules and regulations approved by the Judicial Conference of the United States pursuant to §§ 40c (2) and (3) of the Act and 28 U.S.C. § 1914(b).

If the original petition commenced a Chapter XIII case, an additional filing fee would be required to be paid with the Chapter XII petition.

Rule 12-11. Schedules, Statement of Affairs, and Statement of Executory Contracts.

(a) Schedules and Statements Required.

The debtor shall file with the court schedules of all his debts and all his property, a statement of his affairs, and a statement of his executory contracts, prepared by him in the manner prescribed by Official Forms No. 12-F4 and either No. 12-F5 or No. 12-F6, whichever is appropriate. The number of copies of the schedules and statements shall correspond to the number of copies of the petition required by these rules.

(b) Time Limits.

Except as otherwise provided herein, the schedules and statements, if not previously filed in a pending bankruptcy or Chapter XI case, shall be filed with the petition. A petition shall nevertheless be accepted by the clerk if accompanied by a list of all the debtor's creditors and their addresses, and the schedules and statements may be filed within 15 days thereafter in such case. On application, the court may grant up to 30 additional days for the filing of schedules and the statements; any further extension may be granted only for cause shown and on such notice as the court may direct.

(c) Partnership.

If the debtor is a partnership, the general partners shall prepare and file the schedules of the debts and property, statement of affairs, and statement of executory contracts of the partnership.

(d) Interests Acquired or Arising After Petition.

Bankruptcy Rule 108(e) applies in Chapter XII cases except that the supplemental schedule need not be filed with respect to property or interests acquired after confirmation of a plan.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (a). This rule is an elaboration of § 7a (8) and (9) and § 424(1) of the Act. The list of creditors has been referred to in Schedule A of Official Form 12-F4 as the schedule of debts, and the latter designation is employed in the rules and official form as revised. Section 424 has required the schedules of property, list of creditors and statements to be filed in triplicate, and § 59c of the Act has required petitions to be filed in the same number. Rules 12-6 and 12-7 require petitions to be filed in an original and 4 copies. Each required copy of a petition must be accompanied by a copy of schedules, statement of affairs and statement of executory contracts except as provided in subdivision (b). Only the original need be signed and verified, but the copies should be conformed to the original. See Bankruptcy Rule 911(c).

Subdivision (b) retains the requirement of § 424(1) that the schedules, statement of affairs and statement of executory contracts accompany a petition filed under Rule 12-6 unless a list of creditors and their addresses accompanies the petition. If the Chapter XII petition is filed under Rule 12-7 and schedules and statement of affairs have already been filed in a pending bankruptcy case on Official Forms No. 6 and 7 or 8, or on Official Forms No. 11-F5 and 11-F6 and 11-F7 in a pending Chapter XI case, they need not be refiled on Official Forms No. 12-F4 and 12-F5 or 12-F6; however, the statement of executory contracts must be filed unless previously filed in a pending Chapter XI case, but no official form is provided.

Whereas the option to file with the petition a list of creditors with their addresses is available to the detbor under § 424(1) only if he also files a summary of assets and liabilities and if the court for cause shown gives him further time for filing the schedules and statements, the rule allows the debtor 15 more days for filing the schedules and statement without the necessity of applying for and obtaining an extension of time from the court. A debtor frequently has an urgent need for relief available under Chapter XII of the Act, and allowing him up to 15 days in which to provide the information required on the schedules and in the statements will be less productive of administrative inconvenience and delay than the present requirement of an application for extension of time. Extensions of time beyond the 15 day period allowed by the second sentence of subdivision (b) are governed by the last sentence of the subdivision and by Bankruptcy Rule 906(b). An extension for up to 30 days may be granted on application to the court, but any further extension may be made only for cause shown and after notice as the court may direct.

Subdivision (c), prescribing who shall prepare and file schedules and the statements whenever a debtor is a partnership is new. While the duty to prepare the schedules and the statements of a partnership attaches to all the general partners, one partner may sign these papers on behalf of a partnership at the foot of Official Form No. 6.

Subdivision (d), which is new, provides a procedure for getting information as to post-petition acquisitions of the debtor prior to confirmation of a plan. This subdivision contemplates that the original schedules and statements will be complete and accurate as of the time of the filing of a petition in bankruptcy or under Chapter XI where a petition is filed under Rule 12-7. If that is not the case, they should be corrected by amendment pursuant to Rule 12-12 rather than by the filing of supplemental schedules and statement of affairs pursuant to this rule.

The reference to "bankruptcy" or "date of bankruptcy" in Bankruptcy Rule 108(e) means the date of the initial petition instituting a case under the Act. The plan or order of confirmation may require the filing of a supplemental schedule if property or interests are acquired before a later date fixed for the revesting of title in the debtor or vesting of title in some other person.

If the case is converted to bankruptcy, the requirements of subdivision (d) will no longer apply, but the requirements of subdivision (e) of Bankruptcy Rule 108 as to reporting post-petition property acquisitions will become applicable.

Rule 12-12. Verification and Amendment of Petition and Accompanying Papers.

Bankruptcy Rules 109 and 110 apply in Chapter XII cases to petitions, schedules, statements of affairs, statements of executory contracts, and amendments thereto.

NOTES OF ADVISORY COMMITTEE ON RULES

Bankruptcy Rules 109 and 110 do not include statements of executory contracts because only schedules and statements of affairs are filed in bankruptcy cases under Bankruptcy Rule 108. In Chapter XII cases, however, a statement of executory contracts is required by Rule 12–11 and thus the rules on verification and amendment apply equally to such a statement.

See also Bankruptcy Rule 911(c) requiring that the original be executed and vertified and the copies conformed to the original.

Rule 12–13. Venue and Transfer.

(a) Proper Venue.

(1) *General venue requirement.* A petition filed pursuant to Rule 12–6 may be filed in the district (A) where the debtor has had his principal place of business or his principal assets for the preceding 6 months or for a longer portion thereof than in any other district; or (B) if there is no such district, in any district where the debtor has property. A petition filed pursuant to Rule 12–7 shall be filed with the court in which the other petition under the Act is pending.

(2) *Partner with partnership or copartner.* Notwithstanding the foregoing: (A) a petition commencing a Chapter XII case may be filed by a general partner in a district where a petition under the Act by or against a partnership is pending; (B) a petition commencing a Chapter XII case may be filed by a partnership or by any other general partner or any combination of the partnership and the general partners in a district where a petition under the Act by or against a general partner is pending.

(3) *Affiliate.* Notwithstanding the foregoing, a petition commencing a Chapter XII case may be filed by an affiliate of a debtor or bankrupt in a district where a petition under the Act by or against the debtor or bankrupt is pending.

(b) Transfer of Cases; Dismissal or Retention When Venue Improper; Reference of Transferred Cases.

Bankruptcy Rule 116(b) and (d) apply in Chapter XII cases.

(c) Procedure When Petitions Involving the Same Debtor or Related Debtors Are Filed in Different Courts.

Bankruptcy Rule 116(c) applies in Chapter XII cases.

Notes of Advisory Committee on Rules

The general venue requirement of *paragraph (1) of subdivision (a)* provides that a Chapter XII petition shall be filed with the court where another petition or case is pending. The other petition could be one which commenced a bankruptcy case, or a case under Chapter XI or Chapter XIII.

Paragraph (2) of subdivision (a) incorporates and extends the principle embodied in § 5d of the Act. Like § 2a (1), § 5d has served primarily as a venue provision though couched in jurisdictional terms. See 1 Collier, ¶ 2.17[1] (1968). Paragraph (3) goes beyond § 5d by permitting a petition to be filed by a partner or partnership in a district because of the pendency there of a case which may not have been filed in accordance with the provisions of paragraph (1) or (2) of the subdivision that prescribe proper venue for such a case. The procedure for effecting a transfer of both cases, if in the interest of justice or for the convenience of the parties, is provided in subdivision (b). Rule 12–14 authorizes joint administration of partnership and partners' estates under appropriate circumstances.

Paragraph (3) of subdivision (a) is derived from but goes considerably beyond § 129 of the Act, which authorizes a petition by or against a subsidiary to be filed in a court which has approved a Chapter X petition by or against its parent corporation. An affiliate is defined in Bankruptcy Rule 901(3) to include a variety of individuals or other persons having connections different from those contemplated by §§ 106(13) and 129 of the Act. Under Chapter XII of the Act, only noncorporate debtors may seek relief. But an individual seeking such relief may control a corporation to an extent within the definition of "affiliate", which corporation is undergoing rehabilitation pursuant to Chapter XI of the Act.

Rule 12–14. Joint Administration of Cases Pending in Same Court.

Bankruptcy Rule 117(b) and (c) apply in Chapter XII cases.

Notes of Advisory Committee on Rules

This rule recognizes the appropriateness of joint administration in cases where petitions concerning related debtors are pending. Subdivision (a) of Bankruptcy Rule 117 dealing with consolidation of cases involving the same bankrupt inapplicable in Chapter XII cases. The Chapter XII petition being voluntary, there would not be Chapter XII cases involving the same debtor.

The authority of the court to order a joint administration under this rule extends to situation where cases are pending in the same court by virtue of an order from another court pursuant to Rule 12–13.

Rule 12–15. Death or Insanity of Debtor.

In the event of death or insanity of the debtor, a Chapter XII case may be dismissed, or if further administration is feasible and in the best interest of the parties, the estate may be administered and the case concluded in the same manner, so far as possible, as though the death or insanity had not occurred.

Notes of Advisory Committee on Rules

This rule is an adaptation of § 8 of the Act. If administration continues, it may thereafter be dismissed or converted to bankruptcy for any of the causes any other Chapter XII case may be dismissed or converted to bankruptcy.

Rule 12–16. Debtor Involved in Foreign Proceeding.

Bankruptcy Rule 119 applies in Chapter XII cases.

Rule 12–17. Appointment of Trustee; Continuance of Debtor in Possession; Removal.

(a) Reappointment of Bankruptcy Trustee.

When a petition is filed under Rule 12–7 after the qualification of a trustee in bankruptcy in a pending bankruptcy case, the court shall appoint such trustee as trustee in the Chapter XII case.

(b) Retention of Debtor in Possession; Appointment of Trustee.

On the filing of a petition under Rule 12–6 or 12–7, if no trustee in bankruptcy has previously qualified, the debtor shall continue in possession. On application of any party in interest, the court may, for cause shown, appoint a trustee.

(c) Notice to Trustee of His Appointment; Qualification.

The court shall immediately notify the trustee of his appointment, inform him as to how he may qualify, and require him forthwith to notify the court of his acceptance or rejection of the office. A trustee shall qualify. as provided in Rule 12–19.

(d) Eligibility.

Only a person who is eligible to be a trustee under Bankruptcy Rule 209(d) may be appointed a trustee in a Chapter XII case.

(e) Removal of Trustee for Cause.

On application of any party in interest or on the court's own initiative and after hearing on notice, the court may remove a trustee for cause and either appoint a successor or designate the debtor as debtor in possession.

(f) Substitution of Successor.

When a trustee dies, resigns, is removed, or otherwise ceases to hold office during the pendency of a Chapter XII case, his successor is automatically substituted as a party in any pending action, proceeding, or matter without abatement.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivisions (*a*) *and* (*b*) of this rule are derived from §§ 332 and 432 of the Act. Section 332 requires retention of a trustee in bankruptcy in a Chapter XI case if one was previously elected or appointed in a pending bankruptcy case but subdivision (a) renders his "qualification" the operative element. The qualification of a trustee in bankruptcy is governed by Bankruptcy Rule 209. In Chapter XII, § 432, a trustee may be appointed by the court. This rule conforms the practice for Chapter XI and XII cases. That is, the proper officer would be a qualified trustee from a pending bankruptcy case or, if none, the debtor retained in possession. In Chapter XI, however, it is possible for a receiver to be appointed. In Chapter XII there is no provision for a receiver. The officer will be either the debtor in possession or a trustee. Under § 441, the appointed trustee is vested with the title of a bankruptcy trustee. Accordingly, this rule provides that the trustee is either the prior bankruptcy trustee, if any, by new appointment, or, if none, by appointment in the Chapter XII case.

The fact that the court may appoint a trustee does not necessarily prevent it from appointing a receiver to take charge of the property before such trustee is appointed where the situation warrants such action. See § 2a(3) of the Act.

Rule 12-20 continues the policy of the Act of June 7, 1934, 28 Stat. 923, against undue concentration of appointments of trustees and receivers, and Bankruptcy Rule 505 contains safeguards against nepotism and undue influence in such appointments. Bankruptcy Rule 503 incorporates the disqualification by § 39b(2) of the Act, of a referee to act as trustee in any case.

Rule 12-18. Trustees for Estates When Joint Administration Ordered.

(a) Appointment of Trustees for Estates Being Jointly Administered.

If the court orders a joint administration of 2 or more estates pursuant to Rule 12-14, it may appoint one or more common trustees or separate trustees for the estates being jointly administered. Common trustees shall not be appointed unless the court is satisfied that parties in interest in the different estates will not be prejudiced by conflicts of interest of such trustees.

(b) Separate Accounts.

The trustee or trustees of estates being jointly administered shall nevertheless keep separate accounts of the property of each estate.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule recognizes that economical and expeditious administration of 2 or more estates may be facilitated by the selection of a single trustee whenever estates are being jointly administered pursuant to Rule 12-14. If, after the appointment of a common trustee a conflict of interest materializes, the court must take special and appropriate action to deal with such conflict.

Subdivision (*b*) is derived from § 5e of the Act and extends the duty of keeping a separate account for each estate to trustees in all cases of joint administration.

Rule 12-19. Qualification by Trustee and Disbursing Agent; Indemnity; Bonds; Evidence.

(a) Qualifying Bond or Security.

Except as provided hereinafter, every trustee within 5 days after his appointment, and every person specially appointed as disbursing agent within the time fixed by the court shall, before entering on the performance of his official duties, qualify by filing a bond in favor of the United States conditioned on the faithful performance of his official duties or by giving such other security as may be approved by the court.

(b) Blanket Bond.

The court may authorize a blanket bond in favor of the United States conditioned on the faithful performance of official duties by a trustee in more than one case or by more than one trustee.

(c) Qualification by Filing Acceptance.

A trustee for whom a blanket bond has been filed pursuant to subdivision (b) of this rule shall qualify by filing his acceptance of his appointment in lieu of the bond.

(d) Indemnification.

The court may after hearing on notice to the debtor and such other persons as the court may direct, order the debtor to indemnify or otherwise protect the estate against subsequent loss thereto or diminution thereof until the entry, if any, of an order of adjudication.

(e) Amount of Bond and Sufficiency of Surety; Filing of Bond; Proceeding on Bond.

Bankruptcy Rule 212(e) and (f) apply to the bonds of trustees and persons specially appointed as disbursing agents in Chapter XII cases.

(f) Evidence of Qualification; Debtor Continued in Possession.

A certified copy of the order approving the bond or other security given by a trustee under subdivision (a) or of his acceptance filed under subdivision (c) of this rule shall constitute conclusive evidence of his appointment and qualification. Whenever evidence is required that a debtor is a debtor in possession, the court may so certify and the certificate shall constitute conclusive evidence of that fact.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (*a*) of this rule is based on §§ 50b and 437 of the Act but recognizes that security other than a bond may be given by a trustee as a mode of qualifying under the rule.

Subdivision (*b*), which is new, gives explicit authority for approval by the court of a single bond to cover (1) a person who qualifies as trustee in a number of cases, and (2) a number of trustees each of whom qualifies in a different case. The cases need not be related in any way. Substantial economies can be effected if a single bond covering a number of different cases can be issued and approved at one time. When a blanket bond is filed the trustee qualifies under subdivision (c) of the rule by filing an acceptance of the office.

Subdivision (*d*) is derived from § 426 of the Act and refers to indemnification rather than faithful performance as under subdivision (a). Loss to the estate may be protected against in ways other than filing an indemnifying bond as, for example, an individual foregoing compensation for a period of time and subdivision (d) recognizes such possibilities. This subdivision is broader in scope than § 426 in that indemnification can be required in all cases. Under § 426 indemnification is limited to cases commenced by the filing of an original petition pursuant to § 422.

Subdivision (f) is a revision of § 21e of the Act to prescribe the evidentiary effect of a certified copy of an order approving any security given by a trustee under this rule or, a certificate that the debtor has been retained in possession. The order of approval should conform substantially to Official Form No. 12-F10. Copies of such certificates are not within § 21g of the Act; in such case a certified copy of the petition may be recorded pursuant to § 21g.

Rule 12-20. Limitation on Appointment of Trustees.

Bankruptcy Rule 213 applies in Chapter XII cases.

Rule 12-21. Employment of Attorneys and Accountants.

Bankruptcy Rule 215 applies in Chapter XII cases.

Rule 12-22. Authorization of Trustee or Debtor in Possession To Conduct Business of Debtor.

The court may authorize the trustee or debtor in possession to conduct the business and manage the property of the debtor for such time and on such conditions as may be in the best interest of the estate.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is derived from § 445 of the Act. Continuation of the business represents the norm in Chapter XII cases as distinguished from a liquidation of an estate as is usually contemplated in bankruptcy cases.

The conditions which may be imposed by the court include the posting of an indemnification bond pursuant to Rule 12-19.

Rule 12-23. Notice to Parties in Interest and the United States.

(a) Ten-Day Notices to Parties in Interest.

Except as provided hereinafter, the court shall give the trustee, the debtor, all creditors, and indenture trustees at least 10 days' notice by mail of (1) a meeting of creditors; (2) any proposed sale of property, other than in the ordinary course of business, including the time and place of any public sale, unless the court on cause shown shortens the time or orders a sale without notice; (3) the hearing on the approval of a compromise or settlement of a controversy, unless the court on cause shown directs that notice not be sent; (4) the time for filing objections to confirmation; (5) the hearing to consider confirmation of a plan; (6) the time fixed to reject a proposed modification of a plan when notice is required by Rule 12-39; and (7) the hearing on an application for allowances for compensation or reimbursement of expenses. The notice of a proposed sale of property, including real estate, is sufficient if it generally describes the property to be sold. The notice of a hearing on an application for compensation or reimbursement of expenses shall specify the applicant and the amount requested.

(b) Other Notices to Parties in Interest.

The court shall give notice by mail to the trustee, the debtor, all creditors, and indenture trustees of (1) dismissal of the case pursuant to Rule 12-41; (2) the time allowed for filing a complaint to determine the dischargeability of a debt pursuant to § 17c(2) of the Act as provided in Rule 12-47; and (3) entry of an order confirming a plan pursuant to Rule 12-38.

(c) Addresses of Notices.

Bankruptcy Rule 203(e) applies in Chapter XII cases.

(d) Notices to the United States.

Copies of all notices required to be mailed to creditors under these rules shall be mailed to the United States in the manner provided in Bankruptcy Rule 203(g).

(e) Notice by Publication.

Bankruptcy Rule 203(h) applies in Chapter XII cases.

(f) Caption.

The caption of every notice given under this rule shall comply with Rule 12-9.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule collects the provisions for notices specifically applicable to the trustee, the debtor, creditors, and indenture trustees in Chapter XII cases, but reference must be made to other rules for the time and manner in which the notices required by subdivision (b) shall be given. The grant of general authority to the court to regulate notices in Bankruptcy Rule 907 supplements but is subject to the specific provisions of Rule 12-23 and any other rule prescribing the terms of notice.

Subdivision (a) requires that parties in interest get 10-day notices by mail of the significant events in a Chapter XII case, including creditors' meetings. Since notice by mail is complete on mailing, the requirement of this subdivision is satisfied if the notices it prescribes are deposited in the mail at least 10 days before the event of which notice is to be given, regardless of when the notice is received. See Bankruptcy Rule 906(e); 3 Collier 494 (1971).

The time limits prescribed by subdivision (a) cannot be reduced except to the extent and under the conditions stated in this rule. *Cf.* Bankruptcy Rule 906(c). The exceptions referred to by the introductory phrase of subdivision (a) include the modifications in the notice procedure permitted by subdivision (e) when compliance with subdivision (a) is impracticable.

Section 455 of the Act is not affected by subdivision (a) of this rule. That section gives the Secretary of the Treasury 60 days to accept or reject a plan that affects tax claims. This rule specifies the notice requirement of the date for filing objections to confirmation and the hearing on confirmation.

Subdivision (c) recognizes that an agent authorized to receive notices for a creditor may, without a court order, designate how notices to the creditor he represents should be addressed. Such an agent includes an officer of a corporation, an attorney at law, or an attorney in fact if the requisite authority has been given him.

Subdivision (d) is a revision of § 519 of the Act. The premise of the requirement that the district director of internal revenue receive all notices that creditors receive under subdivisions (a) and (b), is that every debtor is at least potentially a tax debtor of the United States. Notice to the district director alerts him to the possibility that a tax debtor's estate is undergoing arrangement. Where other indebtedness to the Federal government is indicated, the United States Attorney or appropriate agency, etc., is to receive the various notices. This rule is not intended to preclude a local rule from requiring a state or local tax authority to receive some or all of the notices creditors are entitled to receive under subdivisions (a) and (b).

Subdivision (*e*) specifies two kinds of situations in which notice by publication may be appropriate: (1) when notice by mail is impracticable; and (2) when notice by mail alone is less than adequate. Supplementation of notice by mail is indicated when the debtor's records are incomplete or inaccurate and it is reasonable to believe that publication may reach some of the creditors who would otherwise be missed. Bankruptcy Rule 908 applies when the court directs notice by publication under this rule.

As noted in connection with Rule 12-9, the disclosure requirement in subdivision (f) of this rule follows the practice established in some districts by local rule. Inclusion in notices to creditors of information as to other names used by the debtor will assist them in the preparation of their proofs of claim.

The provisions of § 58c of the Act, requiring notices to be given by the referee unless otherwise ordered by the judge and authorizing written waiver of any notice required by the Act, have been omitted from the rule as unnecessary. This duty may be delegated to an assistant or an employee in the clerk's office as provided in Bankruptcy Rule 506. Bankruptcy Rule 907 authorizes the court to prescribe the manner in which any other notice is to be given under the rules. These rules pose no obstacle to the court's giving notice by mail deposited at the location of a national or regional computer center on the basis of information supplied the center by the court. Waiver of notice may be by conduct as well as in writing, and its effect may be appropriately left to case law. See, *e.g., Connelly v. Hancock, Dorr, Ryan & Shove*, 195 F. 2d 864, 868–69 (2d Cir. 1962); *In re Purrier*, 73 F.Supp. 418, 420 (W.D. Wash. 1947).

Pursuant to the definition of "creditor" in § 407 of the Act, notices under this and all other rules should also be mailed to secured creditors.

Rule 12-24. Meeting of Creditors.

(a) First Meeting.

(1) *Date and place.* The first meeting of creditors shall be held not less than 20 nor more than 40 days after the filing of a petition commencing a Chapter XII case but if there is an application or motion to dismiss or to convert to bankruptcy pursuant to Rule 12-41 or an appeal from or a motion to vacate an order entered under that rule, the court may delay fixing a date for such a meeting. The meeting may be held at a regular place for holding court or at any other place within the district more convenient for the parties in interest.

(2) *Agenda.* The bankruptcy judge shall preside over the transaction of all business at the first meeting of creditors, including the examination of the debtor. He shall, when necessary, determine which claims are unsecured and which are secured and to what extent, which claims have voted for acceptance of a plan, and may fix a time for filing a plan if one has not been filed.

(b) Special Meetings.

The court may call a special meeting of creditors on application or on its own initiative.

Notes of Advisory Committee on Rules

Subdivision (*a*) is derived from § 434 of the Act and the time for holding the first meeting of creditors runs from the filing of the petition. Paragraph (2) of this subdivision incorporates the provisions of §§ 436 and 437(3) of the Act. This paragraph adds to the agenda the determination of which claims are secured and unsecured. The first meeting of creditors by definition includes any adjourned meetings.

Subdivision (*b*) is derived from § 55d of the Act and Bankruptcy Rule 204(b) vesting general authority in the referee to call a special meeting when necessary.

No provision is made for a final meeting of creditors.

Rule 12-25. Representation of Creditors.

(a) Representation.

A creditor may appear in a Chapter XII case and act in his own behalf or by an attorney authorized to practice in the court, and may also perform any act not constituting the practice of law by an authorized agent, attorney in fact, proxy, or committee.

(b) Data Required.

Every person or committee representing more than one creditor, and every indenture trustee shall file a signed statement with the court setting forth (1) the names and addresses of such creditors; (2) the nature and amounts of their claims and the time of acquisition thereof unless they are alleged to have been acquired more than one year prior to the filing of the petition; (3) a recital of the pertinent facts and circumstances in connection with the employment of such person or indenture trustee, and, in the case of a committee, the name or names of the person or persons at whose instance, directly or indirectly, such employment was arranged or the committee was organized or agreed to act; and (4) with reference to the time of the employment of such person, or the organization or formation of such committee, or the appearance in the case of any indenture trustee, a showing of the amounts of claims owned by such person, the members of such committee or such indenture trustee, the times when acquired, the amounts paid therefor and any sales or other disposition thereof. The statement shall include a copy of the instrument, if any, whereby such person, committee, or indenture trustee is empowered to act on behalf of creditors. A supplemental statement shall be filed promptly, setting forth any material changes in the facts contained in the statement filed pursuant to this subdivision.

(c) Failure To Comply; Effect.

The court on its own initiative or on application or motion of any party in interest (1) may determine whether there has been a failure to comply with the provisions of this rule or with any other applicable law regulating the activities and personnel of any person, committee, or indenture trustee or any other impropriety in connection with any solicitation and, if it so determines, the court may refuse to permit any such person, committee, or indenture trustee to be heard further or to intervene in the case; (2) may examine any representation provision of a deposit agreement, proxy, trust mortgage, trust indenture, or deed of trust, or committee or other authorization, and any claim acquired by any person or committee in contemplation or in the course of a case under the Act and grant appropriate relief pursuant to the Act; and (3) may hold invalid any authority or acceptance given, procured, or received by a person or committee who has not complied with subdivision (b) of this rule.

Notes of Advisory Committee on Rules

This rule is derived from § 456 of the Act, and also from §§ 209–213 of the Act and Chapter X Rule 10-211. It incorporates the disclosure requirements presently applicable only in Chapter X cases and is very similar to Rule 10-211.

Rule 12–26. Examination.

Bankruptcy Rule 205 applies in Chapter XII cases, except that the scope of examination referred to in subdivision (d) thereof may also relate to the liabilities and financial condition of the debtor, the operation of his business and the desirability of the continuance thereof, the source of any money or property acquired or to be acquired by the debtor for the purposes of consummating a plan and the consideration given or offered therefor, and any other matter relevant to the case or to the formulation of a plan.

Notes of Advisory Committee on Rules

This rule adds, as within the scope of the examination, inquiries concerning the means with which the debtor proposes to carry out the provisions of his proposed plan and any promises or transfers used to obtain such means from third parties. In determining whether to accept or reject a plan, creditors should have all relevant information placed before them; similarly, the court requires the pertinent data to determine whether a proposed plan is in the best interest of creditors and is feasible.

Rule 12–27. Duty of Trustee or Debtor in Possession To Keep Records, Make Reports, and Furnish Information.

Bankruptcy Rule 218 applies in Chapter XII cases, except that (1) the written report of the financial condition of the estate shall be made by the trustee or debtor in possession within a month after the filing of a petition commencing a Chapter XII case and every month thereafter, and shall include a statement of the operation of the business for the preceding month and, if payments are made to employees, the amounts of deductions for withholding and social security taxes and the place where such amounts are deposited; and (2) the court may excuse the filing of a final report and account by a trustee, and a debtor in possession need not file a final report and account unless ordered to do so by the court.

Notes of Advisory Committee on Rules

The final report and account required by clause (5) of Bankruptcy Rule 218 may incorporate earlier filed interim detailed statements of receipts and disbursements if it contains such a detailed statement incorporated by reference.

Rule 12–28. Compensation for Services and Reimbursement of Expenses.

(a) Factors in Allowing Compensation.

Reasonable compensation and reimbursement of necessary expenses may be allowed by the court to the trustee and his attorney, the attorney for the debtor in possession, the attorney for the debtor, and such other persons as may be authorized to assist the trustee or debtor in possession, and to creditors, committees or representatives of creditors, indenture trustees, depositaries, reorganization managers, and any other parties in interest and the attorneys or agents for any of them, for services which contribute to a plan which is confirmed or to the confirmation of a plan, and for services rendered in opposing a plan confirmation of which has been refused, and for services in connection with the administration of the estate under Chapter XII.

(b) Superseded Case.

If the Chapter XII petition was filed in a pending case, the court may allow, if not already allowed, reasonable compensation for services rendered and reimbursement of expenses to a marshal, receiver, or trustee as allowed by the Act, to the attorney for petitioning creditors, to the attorney for the bankrupt or debtor, and to any other persons and their attorneys entitled to compensation under the Act or rules in such case.

(c) Application for Compensation and Reimbursement; Disclosure of Arrangements Regarding Compensation by Attorney for Debtor; Attorney or Accountant; Restriction on Sharing of Compensation.

Bankruptcy Rule 219 applies in Chapter XII cases and in addition to the matters specified in subdivision (a) thereof the application for compensation for services or reimbursement for necessary expenses shall also set forth the claims against the debtor, if any, in which a beneficial interest, direct or indirect, has been acquired or transferred by the applicant or for his account after the filing of a petition commencing a case under the Act.

(d) Denial of Allowances.

No compensation or reimbursement shall be allowed to any committee or attorney, or other person acting in the case in a representative or fiduciary capacity, who at any time after assuming to act in such capacity has, without the approval of the court, purchased or sold claims against the debtor, or a beneficial interest direct or indirect in such claims, or by whom or for whose account such claims, or beneficial interest therein have been otherwise acquired or transferred.

(e) Dismissal or Conversion to Bankruptcy.

On the dismissal or conversion of a case to another chapter under the Act, the court may allow reasonable compensation for services rendered and reimbursement of expenses incurred in the Chapter XII case by any persons entitled thereto under this rule.

Notes of Advisory Committee on Rules

Authority for the allowance and payment of compensation and reimbursement for expenses to the various officers, employees, and parties in interest involved in a Chapter XII case or a prior pending bankruptcy case is found in §§ 491–495 of the Act, and § 48f by incorporation into § 493. This rule is derived from all of the statutory provisions dealing with such allowances, and from Chapter X Rule 10–215. Subdivision (c) incorporates by reference Bankruptcy Rule 219. It prescribes the procedure for making application for compensation and provides guides for the court in making allowances. This rule is also derived from § 496, the last sentence of 11 U.S.C. § 76a, General Orders 35(3) and 42, and Bankr. R. X–19, E.D. & S.D.N.Y.

The disclosure requirements of § 62d of the Act have been extended by subdivision (c) to cover all payments for services in connection with the case, whether or not made pursuant to previous allowances, and the source of such payments. Requiring such disclosures will strengthen the court's hand in dealing with the evils of fee-splitting and in discovering arrangements and relationships which may exert an adverse influence on administration of the estate. Consistently with the recognition of the propriety of the sharing of professional compensation by the members of a firm, an applicant for an allowance of compensation is excused from disclosing the details of the partnership agreement or other arrangement for the distribution of compensation among members of a firm of lawyers or accountants. The provisions of the rule regarding the sharing of professional compensation continue the policy of the Act as expressed in the proviso to § 62c but extend it not merely to law partners but to associate members of a law partnership, to associate members and partners of an accounting partnership, and to the professional members of an incorporated firm of attorneys or accountants. The last sentence of subdivision (a) of Bankruptcy Rule 219 incorporated in this rule, makes it clear that the disclosures required to be made by an attorney or an accountant when he applies for an allowance of compensation are equally necessary when local practice permits a creditor or any other person to apply on behalf of the attorney or accountant for compensation for professional services. See 3A Collier ¶62.59[1] (1961).

The reference to the filing of a petition commencing a case under the Act relates also to Rule 12-4 providing that for purposes of continuity the Chapter XII petition in point of time refers back to any other petition filed under the Act commencing a case during the pendency of which the Chapter XII petition was filed.

Bankruptcy Rule 219(b) which is incorporated is new and facilitates examination pursuant to Rule 12-29 of payments and arrangements for payment of his attorney by the debtor. Rule 12-29 authorizes the court to examine transactions whereby the debtor directly or indirectly pays money or transfers property to his attorney for services, and the disclosure covers divisions of compensation and arrangements therefor, however received and whatever its source, so long as the compensation is for services rendered in contemplation of or in connection with the case. Such disclosure is a safeguard against roundabout depletions of the estate and impositions on the debtor contrary to the purpose underlying Rule 12-29.

The provisions of § 491(1) and § 494 of the Act remain unaffected by this rule. Those provisions permit compensation to a referee for services in the Chapter XII case and in a prior pending bankruptcy case which compensation is not governed by § 40 of the Act. While such compensation is permitted, it is not actually received by the referee. Rather § 72 provides that payment is to be made to the clerk and transmitted to the Treasury for deposit in the referee's salary and expense fund.

It should be noted that this rule covers not only compensation for services and expenses in the Chapter XII case but also any compensation allowable by law in a superseded case.

Rule 12-29. Examination of Debtor's Transactions With His Attorney.

Bankruptcy Rule 220 applies in Chapter XII cases.

Rule 12-30. Proof of Claim.

(a) Schedule of Debts.

The schedule of debts filed with the court pursuant to Rule 12-11 shall constitute prima facie evidence of the validity and amount of claims of creditors which are not scheduled as disputed, contingent, or unliquidated as to amount and, except as provided in subdivision (b)(3) of this rule, it shall not be necessary for the holder of such claim to file a proof of claim.

(b) Filing Proof of Claim.

(1) *Time for filing.* The court shall fix a time within which proofs of claim may be filed. For cause shown, the court may extend such time. Notice of the time so fixed shall be transmitted to all creditors.

(2) *Who may file.* Any creditor or indenture trustee may file a proof of claim within the time fixed pursuant to subdivision (b)(1) of this rule.

(3) *Who must file.* (A) Any creditor, including the United States, a state, or any subdivision thereof, whose claim is scheduled as disputed, contingent, or unliquidated as to amount, shall file a proof of claim within the time fixed pursuant to subdivision (b)(1) of this rule; any such creditor who fails to do so shall not, with respect to such claim, be treated as a creditor for the purposes of voting and distribution.

(B) The court may, at any time, require the filing of a proof of claim within such time as it may fix. Any person required under this paragraph to file a proof of claim who fails to do so shall not, with respect to such claim, be treated as a creditor for the purposes of voting and distribution.

(4) *Evidentiary effect.* A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of such claim. Such a proof of claim shall supersede any scheduling of that claim made pursuant to Rule 12-11.

(5) *Form and place of filing.* A proof of claim shall consist of a statement in writing setting forth a creditor's claim and, except as provided in Rule 12-32, shall be executed by the creditor or by his authorized agent. Subdivisions (b) and (c) of Bankruptcy Rule 302 apply in Chapter XII cases except that subdivision (c) shall not apply to claims founded on bonds or debentures.

(6) *Filing by indenture trustee.* An indenture trustee may file claims for all holders, known or unknown, of securities issued pursuant to the instrument under which he is trustee.

(c) Transfer of Claim.

If a claim other than one founded on a bond or debenture has been assigned, a statement setting forth the terms of the assignment shall be filed with the court and a copy thereof delivered to the trustee or debtor in possession.

(d) Duty To Examine and Object to Claims.

The trustee or debtor in possession shall examine scheduled debts and proofs of claim and, unless no purpose would be served thereby, object to the allowance of improper claims.

(e) Allowance When No Objection Made.

Subject to the provisions of subdivision (b)(3) of this rule and Rule 12-31, a claim filed in accordance with this rule, or Rule 12-32, or scheduled in accordance with Rule 12-11, shall be deemed allowed unless objection is made by a party in interest.

(f) Objection to Allowance.

An objection to the allowance of a claim shall be in writing. A copy of the objection and notice of a hearing thereon shall be mailed or delivered to the claimant, the debtor and the trustee, or debtor in possession. If an objection is joined with a demand for relief of the kind specified in Bankruptcy Rule 701, the proceeding thereby becomes an adversary proceeding.

(g) Reconsideration of Claims.

Bankruptcy Rule 307 applies in Chapter XII cases.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule permits use of the schedules filed under Rule 12-11 to determine the claims of creditors in place of a formal proof of claim. It is derived from Chapter X Rule 10-401.

Subdivision (a): It is contemplated that subdivision (a) of this rule will eliminate the need for filing proofs which, for the most part, have little utility. The inconvenience and expense to numerous and widespread creditors will be obviated as will be the burdens of collecting and registering such claims on the part of the court.

Subdivision (b): Pursuant to subdivision (b), only creditors whose claims are disputed, contingent, or unliquidated, and creditors as to whom the trustee or debtor in possession determines it advisable to have proofs of claim, need file such proof. In any event, any creditor may file a proof of claim. When a proof is filed, there should be compliance with this rule as to form, manner, and time.

The court is to fix a time for filing proofs, as provided in subdivision (b)(1). Such time as is fixed may be extended by the court. An application for an extension of time may be filed before the expiration of the time for filing proofs and also after such time for excusable neglect. See Bankruptcy Rule 906(b), made a part of the Chapter XII Rules by Rule 12-62.

If a claim is required to be filed, failure to do so within the time fixed precludes that creditor from voting on the plan and participating in any distribution or otherwise participating in the Chapter XII case.

The provisions of § 57d of the Act remain applicable and paragraph (4) does not contemplate any change with respect thereto.

Paragraph (6) is derived from § 454 of the Act. Although an indenture trustee may file claims on behalf of debenture holders, the indenture trustee himself is not a creditor for voting purposes.

Notice of the provisions of this rule is provided for in Official Form No. 12-F12, the order for the first meeting of creditors.

Subdivision (d) is derived from § 47a(8) of the Act. The last clause recognizes that the trustee and the court should not be burdened by the making and consideration of objections to claims when the disposition and the objection can have no consequence in the administration of the estate.

Subdivision (e) relieves the court of the substantial burden of making formal orders of allowance of claims to which no objection is filed.

Subdivision (f) prescribes the manner in which an objection to a claim shall be made and notice of the hearing thereon given to the claimant, the debtor, and the trustee or debtor in possession. An objection to a claim may be joined with a counterclaim by the trustee, or debtor in possession, but the filing of a counterclaim ordinarily commences an adversary proceeding subject to Part VII of the Bankruptcy Rules. While creditors may make objections to the allowance of a claim, the demands of orderly and expeditious administration have led to a recognition that the right to object is generally centered in the trustee or debtor in possession as provided in subdivision (d). 3 Collier ¶ 57.17[2.2] (1961). Section 57f of the Act, requiring objections to claims to be heard and determined as soon as the convenience of the court and the best interests of the estates and claimants will permit, is omitted since these considerations govern all proceedings and matters under Chapter XII. See Bankruptcy Rule 903.

Rule 12-31. Classification of Claim; Valuation of Security.

(a) Classification of Claims.

For the purpose of the plan and its acceptance, the court may fix, after hearing on such notice as it may direct, the division of creditors into classes according to the nature of their respective claims.

(b) Valuation of Security.

For the purposes of classification under subdivision (a) of this rule, of claims which may be secured in whole or in part, the court shall, if necessary, on application of any party in interest, hold a hearing on such notice as the court may direct, to determine the value of the security interest and allow the claim as unsecured to the extent it is enforceable for any excess of the claim over such value.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (a) is derived from § 452 of the Act, permitting the court, on notice, to classify claims.

Subdivision (b) is derived from § 453 of the Act to take account of the fact that secured as well as unsecured claims are proved and allowed in Chapter XII cases. The court may use any of the methods for determining the value of security specified in § 57h or any method, including appraisal, which it deems appropriate. Both subdivisions apply not only to distribution but are for purposes of the plan and its acceptance as well. See Rule 12-37(c) pursuant to which a partially secured creditor can vote on a plan in his capacity as a secured creditor and in his capacity as an unsecured creditor.

Subdivision (a) does not require in all cases that the court classify claims after hearing. There may be only one class or the plan may be acceptable as proposed and no separate hearing should be necessary. The hearing on classification may be held before a plan is formulated if the court's instructions on classification are needed to enable the formulation of the plan.

Rule 12-32. Claim by Codebtor.

(a) Filing of Claim.

If a creditor has not filed a proof of claim pursuant to Rule 12-30(b) a person who is or may be liable with the debtor to that creditor, or who has secured that creditor, may, during the time for filing claims prescribed by Rule 12-30(b), execute and file a proof of claim pursuant to this rule in the name of the creditor, if known or if unknown, in his own name. No distribution shall be made on the claim except on satisfactory proof that the original debt will be diminished by the amount of distribution. The creditor may nonetheless file a proof of claim pursuant to Rule 12-30(b) and it shall supersede the proof of claim filed pursuant to the first sentence of this subdivision.

(b) Filing of Acceptance; Substitution of Creditor.

A person who has filed a claim pursuant to the first sentence of subdivision (a) of this rule may file an acceptance or rejection of a plan in the name of the creditor, if known or if unknown, in his own name but if the creditor files a proof of claim within the time permitted by Rule 12-30(b) or files a notice with the court of his intention to act in his own behalf prior to confirmation, he shall be substituted for such other person, with respect to that claim, for all purposes of the Chapter XII case.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is derived from § 57i of the Act and General Order 21(4). The subdivision of the Act and the general order, however, authorize a filing procedure only by a person who has secured a creditor of the debtor by his "individual undertaking." The rule goes further by authorizing the same procedure to be followed when the person has secured a creditor of the debtor by pledging collateral or otherwise creating a security interest in his own property, without assuming any personal obligation to the creditor. The rule assures a fair opportunity for a codebtor to exercise the right of filing in the name of the creditor (or in his own name if that of the creditor is unknown) by recognizing that he should not be required to wait until the last minute before the expiration of the period allowed for the filing of claims. In addition to filing the claim, the surety may also file an acceptance or rejection of the plan. The creditor, however, may within the time limits specified by these rules, file his own proof of claim in which case he is substituted for the codebtor for all purposes including voting. Substitution is also possible even after the time for filing claims has expired by noting with court, prior to confirmation, his intention to act in his own behalf.

Subdivision (b) is not intended to limit any other rights a surety may have.

This rule applies only where the creditor is required by Rule 12-30(b) to file a proof of claim. Otherwise, pursuant to Rule 12-30(a), the schedule of debts will suffice to evidence the creditor's claim and protect the surety.

Rule 12-33. Post-Petition Tax Claims.

Notwithstanding Rule 12-30(b), the court may, at any time while a case is pending, permit the filing of a proof of claim for the following:

(1) Claims for taxes owing to the United States, a state, or any subdivision thereof, at the time of the filing of the petition under Rule 12-6 or 12-7 which had not been assessed prior to the date of confirmation of the plan, but which are assessed within one year after the date of the filing of the petition.

(2) Claims for taxes owing to the United States, a state, or any subdivision thereof, after the filing of the petition under Rule 12-6 or 12-7 and which are assessed while the case is pending.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is based on § 523 of the Act. Express inclusion in this rule of taxes owing to a subdivision of a state incorporates the interpretation placed in § 271 which like § 523 refers to taxes owing to the United States "or any state." *Berryhill* v. *Gerstel*, 196 F.2d 304 (5th Cir. 1952); *Senfour Investment Co.* v. *King County*, 66 Wash. 2d 644, 404 P.2d 760 (1965), appeal dismissed and cert. denied 87 S.Ct. 31, 385 U.S. 1, 17 L.Ed 1 (1966).

Under § 461(6) of the Act, the plan may contain provisions for payment of debts incurred after the filing of the petition with priority over pre-petition claims; these types of debts would be entitled to priority in any event as expenses of administration.

Rule 12-34. Withdrawal of Claim.

A creditor may withdraw a claim as of right by filing a notice of withdrawal, except as provided in this rule. If, after a creditor has filed a proof of claim, an objection is filed thereto or a complaint is filed against him in an adversary proceeding, or the creditor has accepted or rejected the plan or otherwise has participated significantly in the case, he may not withdraw the claim save on application or motion with notice to the trustee or debtor in possession, and on order of the court containing such terms and conditions as the court deems proper.

NOTES OF ADVISORY COMMITTEE ON RULES

Since 1938 it has generally been held that Rule 41 of the Federal Rules of Civil Procedure governs the withdrawal of a proof of claim. *In re Empire Coal Sales Corp.*, 45 F. Supp. 974, 976 (S.D.N.Y.) aff'd sub nom. *Kleid* v. *Ruthbell Coal Co.*, 131 F.2d 372, 373 (2d Cir. 1942); *Kelso* v. *Maclaren*, 122 F.2d 867, 870 (8th Cir. 1941); *In re Hills*, 35 F.Supp. 532, 533 (W.D. Wash. 1940). Accordingly, it was ruled in the cited cases that a proof of claim may be withdrawn only subject to approval by the court after an objection has been filed. This constitutes a restriction of the right of withdrawal as recognized by some though by no means all of the cases antedating the promulgation of the Federal Rules of Civil Procedure. See Collier ¶ 57.12 (1961); Note, 20 Bost.U.L.Rev. 121 (1940).

The filing of a claim does not commence an adversary proceeding under these rules, but the filing of an objection to the claim initiates a contest that must be disposed of by the court. This rule recognizes the applicability of the considerations underlying Rule 41(a) of the Federal Rules of Civil Procedure to the withdrawal of a claim after it has been put in issue by an objection. Rule 21(a)(2) of the Federal Rules of Civil Procedure provides for a bar to dismissal over the objection of a defendant who has pleaded a counterclaim prior to the service of the plaintiff's motion to dismiss. Although the applicability of this provision to the withdrawal of a claim was assumed in *Conway v. Union Bank of Switzerland*, 204 F.2d 603, 608 (2d Cir. 1953), cert. den. 76 S.Ct. 454, 455, 350 U.S. 978, 100 L.Ed. 848, *Kleid v. Ruthbell Coal Co., supra, Kelso v. Maclaren, supra,* and *In re Hills, supra,* this rule vests discretion in the court to grant, deny, or condition the request of a creditor to withdraw, without regard to whether the trustee or debtor in possession has filed a merely defensive objection or a complaint seeking an affirmative recovery of money or property from the creditor.

A number of pre-1938 cases sustained denial of a creditor's request to withdraw his proof of claim on the ground that he had estopped himself or made an election of remedies. 2 Remington, *Bankruptcy* 186 (Henderson ed. 1956); *cf.* 3 Collier 201 (1961). Voting his claim in an election of a trustee in a bankruptcy case was an important factor in the denial of a request to withdraw in *Standard Varnish Works* v. *Haydock*, 143 Fed. 318, 319-20 (6th Cir. 1906), and *In re Cann*, 47 F.2d 661; 662 (W.D. Pa. 1931), and voting on the plan in a Chapter XII case would appear to be of similar significance. It has frequently been recognized also that a creditor should not be allowed to withdraw his claim once he has accepted a dividend. *In re Friedman*, 1 Am.B.R. 510, 512 (Ref., S.D.N.Y. 1899); 3 Collier 205 (1964); *cf. In re O'Gara Coal Co.*, 12 F.2d 426, 429 (7th Cir.), cert. denied 46 S.Ct. 633, 271 U.S. 683, 70 L.Ed. 1150 (1926). It was held in *Industrial Credit Co. v. Hazen*, 222 F.2d 225 (8th Cir. 1955), however, that although a claimant had participated in the first meeting of creditors and in the examination of witnesses, he was entitled under Rule 41(a)(1) of the Federal Rules of Civil Procedure to withdraw his claim as of right when he filed a notice of withdrawal before the trustee filed an objection under § 57g of the Act. While this rule incorporates the post-1938 case law referred to in the first paragraph of this note, it rejects the implication drawn in the *Hazen* case that Rule 41(a) of the Federal Rules of Civil Procedure supersedes the pre-1938 case law that vests discretion in the court to deny or restrict withdrawal of a claim by a creditor on the ground of estoppel or election of remedies. While purely formal or technical participation in a case by a creditor who has filed a claim should not deprive him of a right to withdraw his claim, a creditor who has accepted a dividend or who voted on the plan or otherwise participated actively in a case should be permitted to withdraw only with the approval of the court on terms deemed appropriate by it after notice to the debtor and the trustee. 3 Collier 205-06 (1964).

Rule 12-35. Distribution; Undistributed Consideration; Unclaimed Funds.

(a) Distributions.

Except as otherwise provided in the plan and except with respect to an indenture trustee authorized by the indenture under which he is trustee to receive distributions, Bankruptcy Rule 308 applies in Chapter XII cases to cash distributions made under a plan. Except as otherwise provided in the plan or ordered by the court, consideration other than cash distributed under the plan shall be issued in the name of the creditor entitled thereto and, if a power of attorney authorizing another person to receive dividends has been executed and filed in accordance with Bankruptcy Rule 910, such consideration shall be transmitted to such other person.

(b) Undistributed Consideration.

Except as provided in subdivision (c) of this rule, or as otherwise ordered by the court, the disbursing agent shall return to the debtor or to such other person as may be designated by the court any money or other deposited consideration in his possession not distributed under the plan.

(c) Unclaimed Funds.

Sixty days after any distribution, the disbursing agent shall stop payment on all checks then unpaid. Bankruptcy Rule 310 shall otherwise apply in Chapter XII cases.

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Subdivision (b) codifies existing practice, returning to the debtor any funds not needed to make payments under the plan. Pursuant to court order some or all of such funds may be returned to the debtor before distribution under the plan has been fully completed. If the debtor is not entitled to the surplus funds but some third party is, the rule permits return to that third party. This subdivision applies to surplus funds and any other undistributed consideration.

Insofar as subdivision (c) deals with the unclaimed money to be distributed under the plan or the Act, it is derived from § 66 of the Act. The provision of the Act that the unclaimed money so deposited shall not be subject to escheat under the laws of any state is a rule of substantive law not appropriate for inclusion in the rule.

While duplication of claims could occur, as where an indenture trustee files claims and one of the debenture holders also files a claim, one should be disallowed and only a single distribution made. If a holder is scheduled or files, the claim of the indenture trustee is reduced or disallowed pro tanto. The court may permit distribution to the indenture trustee on the claims he has filed if the underlying trust indenture so provides.

Rule 12-36. Filing of Plan; Transmission to Creditors; Adjourned Meeting.

(a) Filing of Plan by Debtor.

The debtor may file a plan with his petition or thereafter, but not later than a time fixed by the court.

(b) Filing of Plan by Creditors.

Within such time as may be fixed by the court, a plan may be filed by a creditor holding a security interest in real property or a chattel real dealt with by such plan.

(c) Number of Copies.

If required by the court, the person filing a plan shall promptly furnish a sufficient number of copies to enable the court to transmit them as provided in subdivision (d) of this rule.

(d) Transmittal of Plan; Adjourned Meetings.

If a plan is filed prior to mailing of notice of the first meeting of creditors, a copy of the plan shall accompany the notice. If the debtor has not filed a plan prior to the first date set for the first meeting of creditors, the court, at the first meeting or thereafter, shall fix a time for filing a plan. If the debtor has not filed a plan prior to the mailing of notice of the first meeting of creditors, the court at the first meeting, shall adjourn the meeting to a date certain. When a plan is timely filed by the debtor or a creditor, a copy thereof and notice of a subsequent adjourned meeting date shall be mailed to the persons specified in Rule 12-13(a) at least 10 days prior to such date. The court may adjourn a first meeting of creditors from time to time to dates certain.

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The time for filing a plan represents a departure from § 423 of the Act. That section requires a plan to be part of the petition but this appears unrealistic. Pursuant to this rule a plan may, but need not, be filed with the petition; however, if the court has fixed a time for filing the plan, it must be filed within that time. The court may fix such time at the first meeting, at any adjourned first meeting, or at any time.

Subdivision (b) is derived from § 466 of the Act which permits creditors to propose a plan. If a creditor's plan is filed, the debtor may still file a plan within the time fixed by the court.

Copies of the plan are to be transmitted to parties in interest as specified in Rule 12-23(a) either with the notice of the first meeting of creditors, or with notice of any adjourned date if the plan is not filed in sufficient time for it to be sent with the first notice. To enable the court to transmit the copies, the person filing the plan should furnish the number necessary if so required by the court.

When no plan is filed in time for it to accompany the notice of the first meeting that meeting must at some point be adjourned to enable creditors to receive copies of the plan. That original first meeting, however, may be held on the first date set to conduct such other business as may be appropriate.

Rule 12-37. Acceptance or Rejection of Plans.

(a) Persons Entitled To Accept or Reject Plan; Time for Acceptance or Rejection.

The court shall fix a time for the acceptance or rejection of a plan or plans and notice thereof shall accompany any plan transmitted to creditors pursuant to Rule 12-36. If his claim is deemed allowed pursuant to Rule 12-30(e) or has been allowed by the court, a creditor may accept or reject a plan or plans within the time fixed. Acceptances may be obtained before or after the filing of the petition and may be filed with the court on behalf of the accepting creditor. For cause shown and within such time, the court may permit a creditor to change or withdraw his acceptance or rejection.

(b) Form of Acceptance or Rejection.

An acceptance or rejection shall be in writing, shall identify the plan or plans accepted or rejected, and shall be signed by the creditor or his authorized agent. If more than one plan is transmitted pursuant to Rule 12-36, an acceptance or rejection may be filed by each creditor for any number of such plans and if acceptances are filed for more than one plan, the creditor may indicate his preferences among the plans so accepted.

(c) Acceptance or Rejection by Partially Secured Creditor.

A creditor whose claim has been allowed in part as a secured claim and in part as an unsecured claim shall be entitled to accept or reject a plan or plans in both capacities.

(d) Computing Requisite Majorities.

The requisite majorities necessary for the acceptance of a plan shall be computed on the basis of the claims of creditors affected by the plan who file an acceptance or rejection of the plan within the time prescribed which in no event shall be less than the requisite majorities of the filed and allowed claims. The filing of an acceptance or rejection of a plan by a creditor shall be deemed to constitute the filing of a proof of claim for the purpose of computing the majorities required by the Act.

(e) Temporary Allowance.

Notwithstanding objection to a claim, the court may temporarily allow it to such extent as to the court seems proper for the purpose of accepting a plan.

NOTES OF ADVISORY COMMITTEE ON RULES

Section 468(1) of the Act requires a plan to be accepted in writing filed with the court by the requisite number of creditors before the conclusion of the first meeting.

Under *subdivision (a)* acceptances or rejections would have to be filed within a time fixed by the court rather than before the conclusion of the first meeting. The concept of this rule is that only those votes cast are counted in computing the requisite majorities. Accordingly, the conclusion of the first meeting would not be an appropriate date. Notice of the time fixed by the court under this subdivision is to be transmitted to creditors along with the plan. Acceptances may be obtained by the debtor or creditors before the filing of the petition.

Subdivision (b): An acceptance or rejection should properly identify the plan accepted. Since a creditor may propose a plan pursuant to Rule 12-36, it is possible that more than one plan will be transmitted to creditors. In such a case, this subdivision permits creditors to indicate their preferences among the plans which they accept. This would help the court in determining which plan to confirm if more than one plan is accepted and the requisite deposit is made under each.

Subdivision (c): A creditor whose claim is partially secured is entitled to accept or reject a plan in each capacity. Valuation of secured claims for this purpose is provided for in Rule 12-31.

Subdivision (d) is adapted from § 468(1) of the Act. Under that section the requisite majorities for determining whether or not a plan is accepted are based on the total number of claims filed and allowed; thus failure to accept a plan by a creditor who filed a proof of claim is tantamount to a rejection. The rules does not displace this statutory provision but it places emphasis on the need to file an acceptance or rejection. Subdivision (d) provides an increased democratization of this procedure by providing that the votes cast are the ones counted in computing such majorities. Accordingly, a creditor who wishes to participate in the determinative process must file either an acceptance or rejection of the plan. The failure of one who has filed a proof of claim to vote may still count as a rejection by vitrue of the fact that in the actual computation of votes there must be acceptance by the majorities required under § 468 of the Act, that is, the majorities of those claims filed and allowed. Since Rule 12-30 dispenses with the need to file claims, the final sentence of subdivision (d) deems the filing of an acceptance or rejection to constitute the filing of a claim. If a creditor files a claim prior to voting, the acceptance or rejection would not constitute or supersede such filing. To comply with § 468 of the Act, a proof of claim filed by a creditor will be counted in computing the total amount of claims filed, regardless of whether an acceptance or rejection of the plan was filed by the holder of the claim.

Under the rule, an option rests with the creditor to cast a negative vote by filing a rejection. Under the Act, failure to file a claim within the time specified results in loss of the right to vote on the plan; thus, the rule is more protective of the voting rights. For the purpose of subdivision (d), not more than one acceptance or rejection based on the same claim may be counted.

Rule 12-38. Deposit; Confirmation of Plan; Evidence of Title.

(a) Deposit.

At the first meeting of creditors, after a plan has been accepted and before confirmation, the court shall (1) designate as disbursing agent the trustee, if any, otherwise the debtor in possession or a person specially appointed, to distribute, subject to the control of the court, the consideration, if any, to be deposited; and (2) fix a time before confirmation within which there shall be deposited with the disbursing agent, or in such place and on such terms as the court may approve, the money, other consideration, or security required by the Act for confirmation.

(b) Waiver.

Any person who has waived his right to share in the distribution of the deposit or in payments under the plan shall file with the court, prior to confirmation of the plan, a statement setting forth the waiver and any agreement with respect thereto made with the debtor, his attorney, or any other person.

(c) Objections to Confirmation.

Objections to confirmation of a plan shall be filed and served on the debtor, any other person filing a plan, and creditors' committees, if any, at any time prior to confirmation or by such earlier date as the court may fix. An objection to confirmation on the ground the debtor committed any act or failed to perform any duty which would be a bar to the discharge of a bankrupt is governed by Part VII of the Bankruptcy Rules. Any other objection is governed by Bankruptcy Rule 914.

(d) Hearing on Confirmation.

The court shall rule on confirmation of a plan after hearing on notice as provided in Rule 12-23. The hearing may be held at any time after the conclusion of the first meeting of creditors. If no objection is timely filed under subdivision (c) of this rule, the court may find, without taking proof, that the debtor has not committed any act or failed to perform any duty which would be a bar to the discharge of a bankrupt and that the plan has been proposed and its acceptance procured in good faith, and not by any means, promises, or acts forbidden by law. If more than one plan has received the requisite number of acceptances, the court shall consider the preferences indicated by the creditors pursuant to Rule 12-37(b) in determining which plan to confirm.

(e) Order of Confirmation.

The order of confirmation shall conform substantially to Official Form No. 12-F18. Notice of entry of the order of confirmation and a copy of the provisions of the order dealing with the discharge of the debtor shall be mailed to the debtor and to all creditors within 30 days after entry of the order.

(f) Evidence of Title.

A certified copy of the plan and of the order confirming the plan shall constitute conclusive evidence of the revesting of title to all property in the debtor or the vesting of title in such other person as may be provided in the plan or in the order confirming the plan.

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Subdivision (a) of this rule is derived from § 437 of the Act and retains the possibility of appointing a person other than the debtor in possession as disbursing agent where there is no trustee. If there is a trustee he shall act as the disbursing agent. A person other than a trustee or debtor in possession may receive no more compensation than that allowed by the Act to a custodial receiver. Since under Rule 12-36 a plan may be filed by creditors, likewise the deposit may be furnished by creditors. The deposit that is required is specified in § 437(2) of the Act.

The language in clause (2) permitting a deposit in such place and on such terms as the court may approve is new and is intended to facilitate escrow arrangements and return of the deposit to the financier if, for example, consummation of confirmation is unduly delayed. The court can, of course, disapprove any such arrangement.

Subdivision (*b*) departs from §§ 437(3) and 468 of the Act and former Official Forms Nos. 55 and 56 by eliminating the requirement for a formal application for confirmation where all affected creditors have not accepted the plan and by requiring a hearing prior to confirmation even though all affected creditors have accepted the plan. The issues at such hearing may include all issues relating to confirmation under §§ 467, 468 and 472 and also any issue as to whether a creditor is affected by the plan under § 407.

The hearing on confirmation may occur immediately upon the conclusion of the first creditors' meeting. Objections to confirmation may be filed by creditors but they must be in writing and filed within a time fixed by the court, if any. If the court does not fix such a time they may be filed at any time prior to confirmation. The contested matter initiated by an objection to confirmation is governed by Bankruptcy Rule 914 unless it is of the type requiring an adversary proceeding under Part VII of the Bankruptcy Rules.

Official Form No. 12–F18 provides an appropriate form for confirmation which may be used either where all affected creditors have accepted the plan or where less than all have accepted the plan. Official Form No. 12–F19 may be used to comply with subdivision (d) to give creditors notice of the entry of the order of confirmation and of the discharge provisions contained in the order.

Subdivision (b) is adapted from General Order 41. It will provide the court and other creditors with any information regarding outside agreements underlying a waiver of the right to share in the distribution or to obtain priority payments. The remainder of General Order 41, refering to the debtor's obligation to file an affidavit, is not incorporated in this rule. The substance of that part, however, may be found in the rule on examination, Rule 12–26 and the rules on compensation, Rules 12–28 and 12–29.

Subdivision (*c*) requires objections to be served on the debtor and any creditors' committee. The court may require objections to be served on other parties if the circumstances warrant such service.

Subdivision (*d*) requires notice to all creditors of the hearing on confirmation but not of any hearing on objections if such hearing is separate. The notice of the hearing on confirmation is essentially a continuing notice, that is, once given, the date and hearing may be adjourned from time to time.

In determining which of several plans to confirm, if more than one has received the requisite number of acceptances, the court should consider the preferences stated by the accepting creditors. In this, the court will have to exercise some discretion, taking into consideration all of the relevant circumstances, particularly where the different classes of creditors and creditors within the same class may express different preferences and there is no overwhelming percentage in favor of one of such plans.

Subdivision (*f*) provides that the order of confirmation constitutes conclusive evidence of the revesting of title in the debtor or such other person as may be provided for in the plan. In the case of a modification of a plan, the order confirming the plan as modified would have the same effect.

Rule 12–39. Modification of Plan Before or After Confirmation.

At any time prior to the acceptance of a plan by the requisite majority of creditors, a person filing a plan pursuant to Rule 12–36 may file a modification thereof. After a plan has been so accepted the person filing the plan may file a modification of the plan only with leave of the court. The debtor or such creditor may also submit with the proposed modification written acceptances thereof by creditors. If the court finds that the proposed modification does not materially and adversely affect the interest of any creditor who has not in writing accepted it, the modification shall be deemed accepted by all creditors who have previously accepted the plan. Otherwise, the court shall enter an order that the plan as modified shall be deemed to have been accepted by any creditor who accepted the plan and who fails to file with the court within such reasonable time as shall be fixed in the order a written rejection of the modification. Notice of such order, accompanied by a copy of the proposed modification, shall be given to the debtor, the trustee, creditors, indenture trustees, and such other persons as the court may designate, at least 10 days before the time fixed in such order for filing rejections of the modification. The debtor or creditor shall, if required by the court, furnish a sufficient number of copies of the proposed modification to enable the court to transmit a copy with each such notice.

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This rule revises the procedure now covered by §§ 469–471 of the Act. The standard for determining whether a proposed modification affects the interest of a creditor who has not in writing accepted it is prescribed in § 407 of the Act. Official Form No. 12–F17 provides a form of order fixing a time for rejecting the proposed modification, combined with a notice thereof. Persons who extend credit after confirmation and who are affected by a proposed modification, may be such other persons to receive notice of the order.

Rule 12–37 authorizes the debtor to obtain acceptances of a proposed plan from his creditors before or after the filing of his petition. Rule 12–36 authorizes the debtor to file a plan with the petition but he is not required to do so. There is no set time limit for filing a plan unless the court fixes a date. That procedure allows the debtor or creditor to submit modified plans without employing the practice for modification prescribed in this rule. Before a plan has been accepted by the requisite number of creditors, the debtor or a creditor who has filed a plan may file a proposed modification as a matter of right. After it has been accepted but before confirmation leave of court is necessary to file a modification.

Under § 470 of the Act, a creditor may include, in his original acceptance of a plan, a rejection of any modification that may subsequently be proposed. This would be a routine, form rejection not directed to any specific modification that has already been proposed. This rule effects a change of that statutory provision. Pursuant to this rule, such routine rejection would not be effective. If and when a modification is proposed, that modification must be specifically rejected by any creditor who has previously accepted the plan and a failure to so reject will constitute an acceptance of the modification.

This rule retains the provision of § 469 of the Act permitting the filing of modifications before or after confirmation.

Rule 12–40. Revocation of Confirmation.

Any party in interest may, at any time within six months after a plan has been confirmed, make a motion pursuant to the Act to revoke the confirmation as procured by fraud. The circumstances constituting the alleged fraud shall be stated with particularity. When such motion is made, the court shall reopen the case if necessary and conduct a hearing on at least 10 days' notice to all parties in interest. If the confirmation is revoked—

(1) The court may dispose of the case pursuant to Rule 12–41(b); or

(2) The court may receive proposals to modify the plan. Thereafter, the procedure for modification and for confirmation of a plan as modified shall follow Rules 12–38 and 12–39, except that acceptance of the plan shall not be required by any creditor who has participated in the fraud and such creditor shall not be counted in determining the amount of the claims of creditors whose acceptance is required.

If a modified plan is not confirmed, the court shall dispose of the case pursuant to Rule 12-41(b).

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This rule is a revision of the procedure contained in § 511 of the Act. While paragraph (1) makes no significant change in § 511(1), paragraph (2) gives the same protection to the innocent debtor and innocent creditors where modification is made to correct fraud for which they are not responsible as they now have in instances of modification before confirmation under Rules 12-38 and 12-39.

Section 511 of the Act apparently permits the court to grant relief contained in paragraphs (1), (2), and (3) thereof where the debtor participated in or had knowledge of the fraud. This rule reaches that result more definitely; even though there has been such participation or knowledge, it may well be in the interest of creditors to go forward with a plan as modified rather than having the case converted to bankruptcy. The notice of the hearing on the motion to revoke confirmation is to be given by the court.

Rule 12-41. Dismissal or Conversion to Bankruptcy Prior To or After Confirmation of Plan.

(a) Voluntary Dismissal or Conversion to Bankruptcy.

The debtor may file an application or motion to dismiss the case or to convert it to bankruptcy at any time prior to confirmation or, where the court has retained jurisdiction, after confirmation. On the filing of such application or motion, the court shall—

(1) if the petition was filed pursuant to Rule 12-7, enter an order directing that the bankruptcy case proceed; or

(2) if the petition was filed pursuant to Rule 12-6, enter an order adjudicating the debtor a bankrupt if he so requests, or, if he requests dismissal, enter an order after hearing on notice dismissing the case or adjudicating him a bankrupt whichever may be in the best interest of the estate.

Notwithstanding the foregoing, when a plan has been filed by a creditor pursuant to Rule 12-36, the court shall not dismiss the case or adjudicate the debtor a bankrupt unless the court, after hearing on notice to the debtor, the trustee, all creditors and indenture trustees, determines that the creditor's plan should not be confirmed under the Act or cannot be consummated.

(b) Dismissal or Conversion to Bankruptcy for Want of Prosecution, Denial of Confirmation, Default, or Termination of Plan.

The court shall enter an order, after hearing on such notice as it may direct dismissing the case, or adjudicating the debtor a bankrupt if he has not been previously so adjudged, or directing that the bankruptcy case proceed, whichever may be in the best interests of the estate—

(1) for want of prosecution; or

(2) for failure to comply with an order made under Rule 12-19(d) for indemnification; or

(3) if no plan is confirmed; or

(4) if confirmation is revoked for fraud and a modified plan is not confirmed pursuant to Rule 12-38; or

(5) where the court has retained jurisdiction after confirmation of a plan;

(A) if a confirmed plan is not consummated; or

(B) if a plan terminates by reason of the happening of a condition specified therein.

The court may reopen the case, if necessary, for the purpose of entering an order under this subdivision. Notwithstanding the foregoing, if a confirmed creditor's plan is not consummated for reasons other than the debtor's default, the court shall not order the case converted to bankruptcy without the written consent of the debtor.

(c) Notice of Dismissal.

Promptly after entry of an order of dismissal under this rule, notice thereof shall be given as provided in Rule 12-23.

(d) Effect of Dismissal.

Unless the order specifies to the contrary, dismissal of a case on the ground of fraud is with prejudice, and a dismissal on any other ground is without prejudice. A certified copy of the order of dismissal under this rule shall constitute conclusive evidence of the revesting of the debtor's title to his property.

(e) Consent to Adjudication.

Notwithstanding the foregoing, no adjudication shall be entered under this rule against a wage earner or farmer without his written consent.

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Subdivisions (a) and (b) of this rule are derived in part from §§ 481 and 482 of the Act. A debtor who has filed his petition in a pending bankruptcy case may at any time before confirmation or, if the court has retained jurisdiction, after confirmation, voluntarily cause the bankruptcy case to proceed. The application may be ex parte. If the debtor seeks dismissal of the case, a hearing is required on notice to creditors, and the court may either adjudicate him a bankrupt if he had filed an original Chapter XII petition, or dismiss the case whichever is in the interest of the debtor and the creditors. The debtor may also convert the Chapter XII case to bankruptcy voluntarily under this subdivision if the Chapter XII petition was an original petition. Such option does not exist, however, if a creditor filed a plan which can be confirmed or consummated.

Under subdivision (b) for all the causes listed whether occurring before or after confirmation (if the court retained jurisdiction) the court may dismiss the case, adjudicate the debtor a bankrupt if he has not been previously adjudged, or direct the bankruptcy case to proceed whichever is in the interest of the debtor and creditors. Thus the court may, if the petition was filed in a pending bankruptcy case, adjudge the debtor a bankrupt or permit adjudication to follow the normal route if there had been an involuntary petition but no adjudication prior to the filing of the Chapter XII petition. Among the causes listed is "want of prosecution" which includes failure to file schedules and statements, failure to propose a plan, withdrawal or abandonment of a plan, or failure to make any deposit required by the plan, all of which are now specified in § 481 of the Act. This rule is not intended to preclude the possibility of confirmation of a revised plan in the same case after confirmation of a plan earlier proposed has been denied. Written consent of the debtor for adjudication is necessary, however, when there is default under a confirmed creditor's plan by someone other than the debtor.

The provision in *subdivision (c)* for notice of dismissal is for the purpose of notifying creditors that no discharge has been granted and to correct their assumption to the contrary so that they can take whatever steps to protect their claims as may be appropriate and necessary before the statutes of limitation have run.

Subdivision (d) is new. The first sentence gives discretion to the court to determine whether dismissal should bar future relief under the Act, but when it makes no specific reference one way or the other in the order, unless the dismissal was for fraud, a dismissal is without prejudice. See Advisory Committee's Note to Bankruptcy Rule 120.

Subdivision (*e*) is derived from § 484 of the Act.

Note should be taken that secured creditors should receive the notices provided for in Rule 12-23, which includes notices under this rule.

Rule 12-42. Confirmation as Discharge.

(a) Statement of Discharge.

The order confirming a plan shall contain provisions substantially similar to Official Form No. 12-F18 stating the effect of confirmation on the further enforcement of claims against the debtor.

(b) Registration in Other Districts.

An order confirming a plan that has become final may be registered in any other district by filing in the office of the clerk of the district court of that district a certified copy of the order and when so registered shall have the same effect as an order of the court of the district where registered and may be enforced in like manner.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (*a*) is derived from § 476 of the Act and renders uniform the practice of providing expressly in the order confirming the plan for the discharge of the debtor. With this express statement, the order will then contain the esssential features of § 14f of the Act, and this part of the order can be mailed to creditors pursuant to Rule 12-38 and § 14f of the Act.

Subdivision (*b*) is derived from § 14g of the Act and provides the same registration procedure for a Chapter XII debtor as for a bankrupt. Registration may facilitate the enforcement of the order of discharge in a district other than that in which it was entered. See 2 Moore, Federal Practice ¶ 1.04[2] (2d ed. 1967). Because of the extraterritorial service of process authorized by Bankruptcy Rule 704, however, registration of the order of discharge is not necessary under these rules to enable a discharged debtor to obtain relief against a creditor proceeding in any district in the United States in disregard of the injunctive provision contained in the order.

Rule 12-43. Petition as Automatic Stay of Actions Against Debtor and Lien Enforcement.

(a) Stay of Actions and Lien Enforcement.

A petition filed under Rule 12-6 or 12-7 shall operate as a stay of the commencement or the continuation of any court or other proceeding against the debtor, or the enforcement of any judgment against him, or of any act or the commencement or continuation of any court proceeding to enforce any lien against his property, or of any court proceeding for the purpose of the rehabilitation of the debtor or the liquidation of his estate.

(b) Duration of Stay.

Except as it may be deemed annulled under subdivision (c) or may be terminated, annulled, modified, or conditioned by the bankruptcy court under subdivision (d), (e), or (f) of this rule, the stay shall continue until the case is closed, dismissed, or converted to bankruptcy or the property subject to the lien is, with the approval of the court, abandoned or transferred.

(c) Annulment of Stay.

At the expiration of 30 days after the first meeting of creditors, a stay provided by this rule other than a stay against lien enforcement shall be deemed annulled as against any creditor whose claim has not been listed in the schedules and who has not filed his claim by that time.

(d) Relief From Stay.

On the filing of a complaint seeking relief from a stay provided by this rule, the bankruptcy court shall, subject to the provisions of subdivision (e) of this rule, set the trial for the earliest possible date, and it shall take precedence over all matters except older matters of the same character. The court may, for cause shown, terminate, annul, modify or condition such stay. A party seeking continuation of a stay against lien enforcement shall show that he is entitled thereto.

(e) Ex Parte Relief From Stay.

On the filing of a complaint seeking relief from a stay against any act or proceeding to enforce a lien or any proceeding commenced for the purpose of rehabilitation of the debtor or the liquidation of his estate, relief may be granted without written or oral notice to the adverse party if (1) it clearly appears from specific facts shown by affidavit or by a verified complaint that immediate and irreparable injury, loss, or damage will result to the plaintiff before the adverse party or his attorney can be heard in opposition, and (2) the plaintiff's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting his claim that notice should not be required. The party obtaining relief under this subdivision shall give written or oral notice thereof as soon as possible to the trustee, receiver, or debtor in possession and to the debtor and, in any event, shall forthwith mail to such person or persons a copy of the order granting relief. On 2 days' notice to the party who obtained relief from a stay provided by this rule without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its reinstatement, and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(f) Availability of Other Relief.

Nothing in this rule precludes the issuance of, or relief from, any stay, restraining order, or injunction when otherwise authorized.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule supplements and reinforces the policy of §§ 11a, 411 and 414 of the Act. Section 11a provides in terms for a mandatory stay of all actions founded on dischargeable claims which are pending against the debtor when the petition is filed, and § 414 authorizes the stay of pending actions and of the commencement of actions whether or not founded on dischargeable claims. Section 414 also authorizes the stay of any act or proceeding to enforce any lien on the property of the debtor. The term "lien" is used in this rule to indicate a consensual security interest in personal or real property, a lien obtained by judicial proceedings, a statutory lien, or any other variety of charge against property securing an obligation. The authority conferred by § 414 with respect to staying enforcement of liens is discretionary; nonetheless § 411 gives the court exclusive jurisdiction of the debtor and its property wherever located and this jurisdictional grant includes granting stays and injunctions. See 9 Collier ¶ 3.01 (1963). The relief from a stay obtainable under subdivision (c) or (d) of the rule could appropriately include permission to reclaim collateral.

Subdivision (*a*) provides that the petition shall operate as a stay of any action, or the enforcement of any judgment, or any act or proceeding to enforce a lien on property of the debtor or any proceeding commenced for the liquidation or rehabilitation of the debtor. This conforms Chapter XII cases with Chapter X cases by including those matters within §§ 113, 116 and 148, such as a pending bankruptcy proceeding, mortgage foreclosure, equity receivership, and the like. Thus, the procedure would be the same, representing a change from § 425 of the Act. The reference to a stay of other proceedings against the debtor is to signify the inclusion of a pending arbitration proceeding within the scope of the automatic stay.

As provided in subdivision (b), the stay provided by this rule continues generally during the pendency of the case unless the case is converted to bankruptcy. In the latter event the stay provisions of Bankruptcy Rules 401 and 601 would become applicable.

A creditor who is subject to the stay of this rule may obtain relief therefrom in appropriate cases by filing a complaint in the court pursuant to subdivision (d). The adversary proceeding thereby commenced is governed by Part VII of the Bankruptcy Rules subject to the requirement of subdivision (d) that the trial date be set for the earliest possible time and given precedence over all other matters not of the same character.

Note should be taken of Rule 12-23 and § 406(2), (4) of the Act which includes secured creditors as those to whom notice of the first meeting of creditors is transmitted. That notice informs all creditors of the stay against lien enforcement provided for in this rule.

Rule 12-44. Duties of Debtor.

Bankruptcy Rule 402 applies in Chapter XII cases and, in addition to the duties specified therein, the debtor shall attend at the hearing on confirmation of a plan and, if called as a witness, testify with respect to issues raised.

NOTES OF ADVISORY COMMITTEE ON RULES

In addition to the duties imposed on a debtor by Bankruptcy Rule 402, this rule requires the debtor to attend the hearing on confirmation of a plan and, if called as a witness, to testify at such hearing.

Rule 12-45. Apprehension and Removal of Debtor To Compel Attendance for Examination.

Bankruptcy Rule 206 applies in Chapter XII cases to a debtor and, if the debtor is a partnership, to the general partners and any other person in control of the partnership.

Rule 12-46. Exemptions.

Bankruptcy Rule 403(a) applies in Chapter XII cases.

NOTES OF ADVISORY COMMITTEE ON RULES

In Chapter XII cases, an elaborate procedure for claiming and contesting exemptions is not necessary. Exempt property is not usually set apart to the debtor as it is to the bankrupt in a bankruptcy case. Accordingly, only subdivision (a) of Bankruptcy Rule 403 is made applicable in Chapter XII cases. Since no time limitations are imposed in this rule or in the bankruptcy rule the debtor is not estopped from claiming exemptions under Bankruptcy Rule 403 if the Chapter XII case is later converted to bankruptcy, nor are creditors or the trustee prevented from objecting to the claim if there had been no litigation of the issue in the Chapter XII case.

Rule 12-47. Determination of Dischargeability of a Debt; Judgment on Nondischargeable Debt; Jury Trial.

Bankruptcy Rule 409 applies in Chapter XII, cases except that the court may but need not make an order fixing a time for filing a complaint under § 17c(2) of the Act. If such an order is made, at least 30 days' notice of the time so fixed shall be given to all creditors in the manner provided in Rule 12-23. The court may for cause, on its own initiative or on application of any party in interest, extend the time so fixed under this rule. If such an order is not made, a complaint to determine the dischargeability of a debt under clause (2), (4), or (8) of § 17a of the Act may be filed at any time.

NOTES OF ADVISORY COMMITTEE ON RULES

Due to the nature of a Chapter XII case, it is not always feasible to require the filing of complaints to determine the dischargeability of debts under § 17c(2) of the Act within 30 and 90 days after the first date set for the first meeting of creditors. Normally it would be more desirable to wait until a plan is confirmed or at least until it appears that confirmation is likely. In any event, there is no need to require the court to fix an early time for the filing of the complaint. Such time may be fixed by the court as it deems in the best interest of the administration of the estate. Where the court does fix a time, the period for giving notice of that time is the same as in Bankruptcy Rule 409. Pursuant to Bankruptcy Rule 409 and § 17c(1) of the Act, the debtor can file a complaint to determine the dischargeability of a debt at any time even if the court does not fix a date. If no time is fixed, a complaint by the debtor or a creditor can be filed even after confirmation and if necessary, pursuant to § 17c(4), a state court action commenced after confirmation can be stayed. This stay would be applicable if the debtor files his complaint in the bankruptcy court.

If the Chapter XII petition is filed in a pending bankruptcy case, and the time for filing complaints had been fixed in the bankruptcy case, the automatic stay of administration of the bankruptcy case pursuant to Rule 12-7 would render the date ineffective and a new one could be fixed by the court in the Chapter XII case.

Rule 12-48. Duty of Trustee or Debtor in Possession To Give Notice of Chapter XII Case.

Bankruptcy Rule 602 applies in Chapter XII cases.

Rule 12-49. Burden of Proof as to Validity of Post-Petition Transfer.

Bankruptcy Rule 603 applies in Chapter XII cases.

Rule 12-50. Accounting by Prior Custodian of Property of the Estate.

(a) Accounting Required.

Any person required by the Act to deliver property in his possession or control to the trustee or debtor in possession, shall promptly file a written report and account with the court in which the Chapter XII case is pending with respect to the property of the estate and his administration thereof.

(b) Examination of Administration.

On the filing of the report and account required by subdivision (a) of this rule and after an examination has been made into the superseded administration, the court shall determine the propriety of such administration, including the reasonableness of all disbursements.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule prescribes the procedure to be followed by any person required to deliver property to the trustee or debtor in possession and to account for his disposition of property under §§ 2a(21) and 69(d) of the Act. See *Emil v. Hanley*, 63 S.Ct. 687, 318 U.S. 515, 87 L.Ed. 954 (1943); and *cf.* § 70a(8) of the Act. The examination under subdivision (b) may be initiated (1) on the motion of the trustee or debtor in possession or the application of the custodian required to account under subdivision (a) for the approval of his account and discharge thereon, (2) on the filing of an objection to the custodian's account by any party in interest or (3) on the court's own initiative.

This rule should be read in light of §§ 506, 507 of the Act. As distinguished from § 2a(21), there is no four-month limitation. The Chapter XII trustee or debtor in possession is vested with the rights of the prior receiver or trustee and is entitled to immediate possession.

This rule also applies in the situation when the Chapter XII case supersedes a prior pending bankruptcy case and requires a receiver or trustee therein to turn over property in his possession, as does § 507 of the Act.

Rule 12-51. Money of the Estate: Deposit and Disbursement.

Bankruptcy Rule 605(b) and (c) apply in Chapter XII cases.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (a) of Bankruptcy Rule 605 is inapplicable in Chapter XII cases because it concerns collecting the property of the estate and converting it to money; these parts of a trustee's functions are applicable only where the estate is being liquidated.

Rule 12-52. Rejection of Executory Contracts.

When a motion is made for the rejection of an executory contract, including an unexpired lease, other than as part of the plan, the court shall set a hearing on notice to the parties to the contract and to such other persons as the court may direct.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is derived from § 413(1) of the Act. As provided in § 461(4) of the Act, the plan may also include provisions for the rejection of executory contracts of the debtor, and § 458 provides that if an executory contract is rejected by the plan or pursuant to permission given by the court any person injured by such rejection shall be deemed a creditor.

Chapters X, XI, and XIII of the Act contain substantially identical provisions for rejection of executory contracts with permission of the court (§§ 116(1), 313(1), and 613(1)) or by provisions in the plan (§§ 216(4), 357 (2), and 646(6)) and for the claims of those injured by the rejection (§§ 202, 353 and 642). In view of these provisions in Chapter X, it has long been recognized that so much of § 70b of the Act as fixes a time for the trustee to assume or reject executory contracts within 60 days after adjudication or within 30 days after his qualification, whichever is later, and provides that any contract not assumed or rejected within that time shall be deemed to be rejected, is inapplicable in Chapter X proceedings. *Texas Importing Co. v. Banco Popular de Puerto Rico*, 360 F.2d 582 (5th Cir. 1966); *Title Insurance & Guaranty Co. v. Hart*, 160 F.2d 961 (9th Cir.) cert. denied 68 S.Ct. 64, 332 U.S. 761, 92 L.Ed. 347 (1947); *In re M & S Amusement Enterprises, Inc.*, 122 F.Supp. 364 (D.Del.1954); *In re Childs Co.*, 64 F.Supp. 282 (S.D.N.Y.1944). As was said in *Texas Importing Co. v. Banco Popular de Puerto Rico, supra*, at p. 584, these provisions in Chapter X "clearly indicate Congress intended that before an executory contract should be rejected, a judicial hearing and inquiry, at which interested parties might be heard, should be held, and that an executory contract could be rejected only with permission of the court. . . ." See also *B. J. M. Realty Corp. v. Ruggieri*, 326 F.2d 281, 338 F.2d 653 (2d Cir. 1964) holding that a lessor waived his option to terminate a lease by accepting rental payments for four months following the filing of a Chapter XI petition by the lessee, so that the lease could thereafter be affirmed, and *Floro Realty & Investment Co. v. Steem Electric Corp.*, 128 F.2d 338 (8th Cir. 1942), holding that where the lessor exercises his option to cancel a lease four months after the lessee files a Chapter X petition all liability for future rent is terminated.

It has also been recognized that, under the pertinent provisions of Chapters X and XI, the other party to an executory contract has no provable claim until his contract is rejected so that, if there has been no rejection with permission of the court prior to confirmation of a plan, "he may insist that his contract be either rejected or assumed under the plan and may apply to the . . . court to protect his interest at the confirmation hearing or before." *In re Greenpoint Metallic Bed Co.*, 113 F.2d 881, 886 (2d Cir., 1940); *Mohonk Realty Corp. v. Wise Shoe Stores, Inc.*, 111 F.2d 287, 290 (2d Cir.,) cert. denied 61 S.Ct. 47, 311 U.S. 654, 85 L.Ed. 418 (1940). See also *Philadelphia Co. v. Dipple*, 61 S.Ct. 538, 541, 312 U.S. 168, 174, 85 L.Ed. 651, 655 (1941).

Rule 12-53. Appraisal and Sale of Property; Compensation and Eligibility of Appraisers and Auctioneers.

(a) Appraiser: Appointment and Duties.

The court may appoint one or more competent and disinterested appraisers who shall prepare and file with the court an appraisal of the property of the debtor. The court may prescribe how such appraisal shall be made.

(b) Sale of Property.

The court may, on such notice as it may direct and for cause shown, authorize the trustee or debtor in possession to lease or sell any real or personal property of the debtor, on such terms and conditions as the court may approve.

(c) Compensation and Eligibility of Auctioneers and Appraisers.

Bankruptcy Rule 606(c) applies in Chapter XII cases to any appraiser or auctioneer appointed by the court.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is derived from §§ 433 and 413(2) of the Act, and incorporates Bankruptcy Rule 606(c) whenever the court appoints an appraiser or auctioneer.

Because the objective of Chapter XII cases is different from that of bankruptcy cases, the thrust of the Chapter XII rule is not to require an appraisal but merely to permit one on application. In bankruptcy, there would be an appraisal unless the court determines it to be unnecessary. See Bankruptcy Rule 606(a).

Subdivision (b) also recognizes a difference between the two types of cases. In bankruptcy the property will be sold; in a Chapter XII case a sale, other than in the ordinary course of business, would be exceptional. This subdivision follows § 413(2) of the Act permitting flexibility in the method and form of the sale but the court could, in prescribing such matters, refer to Bankruptcy Rule 606(b).

An application for the appointment of an appraiser may be made by any party in interest or the appointment may be made by the court on its own initiative.

Rule 12-54. Abandonment of Property.

After hearing on such notice as the court may direct and on approval by the court, the trustee or debtor in possession may abandon any property.

Rule 12-55. Redemption of Property From Lien or Sale.

Bankruptcy Rule 609 applies in Chapter XII cases.

Rule 12-56. Prosecution and Defense of Proceedings by Trustee or Debtor in Possession.

Bankruptcy Rule 610 applies in Chapter XII cases.

Rule 12-57. Preservation of Voidable Transfer.

Bankruptcy Rule 611 applies in Chapter XII cases.

Rule 12-58. Proceeding To Avoid Indemnifying Lien or Transfer to Surety.

Bankruptcy Rule 612 applies in Chapter XII cases.

Rule 12-59. Courts of Bankruptcy; Officers and Personnel; Their Duties.

Part V of the Bankruptcy Rules applies in Chapter XII cases.

NOTES OF ADVISORY COMMITTEE ON RULES

While confirmation of a plan has the effect of discharging the debtor from his liabilities under § 476 of the Act, a provision in the rules for an index of confirmation orders is not necessary, nor is it necessary to provide for the issuance of certificates of discharge. Accordingly, the provisions in Rule 507(c) with respect to an index and certificate of discharge are inapplicable to Chapter XII cases.

Rule 12-60. Adversary Proceedings.

(a) Adversary Proceedings.

Part VII of the Bankruptcy Rules shall govern any proceeding instituted by a party before a bankruptcy judge in a Chapter XII case to (1) recover money or property other than a proceeding under Rule 12-29 or Rule 12-50, (2) determine the validity, priority, or extent of a lien or other interest in property, (3) sell property free of a lien or other interest for which the holder can be compelled to take a money satisfaction, (4) obtain an injunction, (5) obtain relief from a stay as provided in Rule 12-43, (6) object to confirmation of a plan on the ground that the debtor has committed any act or failed to perform any duty which would be a bar to the discharge of a bankrupt, or (7) determine the dischargeability of a debt. Such a proceeding shall be known as an adversary proceeding.

(b) Reference in Bankruptcy Rules.

As applied in Chapter XII cases, the reference in Rule 741 to "a complaint obejcting to the bankrupt's discharge" shall be read to include also a reference to "a complaint objecting to the confirmation of a plan on the ground that the debtor has committed any act or failed to perform any duty which would be a bar to the discharge of a bankrupt."

NOTES OF ADVISORY COMMITTEE ON RULES

Part VII of the Bankruptcy Rules (Rules 701 to 782 inclusive) are incorporated to govern the procedural aspects of most of the litigation within the jurisdiction of the court in Chapter XII cases. Subdivision (a) of this rule substitutes an expanded definition of adversary proceedings in Chapter XII cases for that contained in Bankruptcy Rule 701. Rule 12-2 indicates other substitutions and translations of terms necessary for this purpose.

Rule 12-61. Appeal to District Court.

Part VIII of the Bankruptcy Rules applies in Chapter XII cases, except that:

(1) Rule 802(c) thereof shall read as follows:

"(c) Extension of Time for Appeal.

"The referee may extend the time for filing the notice of appeal by any party for a period not to exceed 20 days from the expiration of the time otherwise prescribed by this rule. A request to extend the time for filing a notice of appeal must be made before such time has expired, except that a request made after the expiration of such time may be granted upon a showing of excusable neglect if the judgment or order does not authorize the sale of any property or the issuance of any certificate of indebtedness, or is not a judgment or order under Rule 12-38 confirming a plan, or is not a judgment or order under Rule 12-41 dismissing a Chapter XII case, or converting a Chapter XII case to bankruptcy."

(2) The following shall be added to Rule 805 thereof:

"Unless an order approving a sale of property or issuance of a certificate of indebtedness is stayed pending appeal, the sale to a good faith purchaser or the issuance of a certificate to a good faith holder shall not be affected by the reversal or modification of such order on appeal whether or not the purchaser or holder knows of the pendency of the appeal."

NOTES OF ADVISORY COMMITTEE ON RULES

Under Bankruptcy Rule 802(c) the time to appeal an order authorizing a sale of any property may not be extended unless a request therefor is filed within the regular appeal time. The same policy of establishing finality of referees' orders applies to orders authorizing the issuance of certificates of indebtedness, confirming a plan, or dismissing or converting a Chapter XII case in order for subsequent events to occur without fear of disruption.

Paragraph (2) of this rule is in accord with case law effectuating a sale pending appeal to a good faith purchaser in the absence of the appellant obtaining a stay of the order approving the sale.

Rule 12-62. General Provisions.

Part IX of the Bankruptcy Rules applies in Chapter XII cases, except that:

(1) The definitions of words and phrases in § 406 of the Act govern their use in Chapter XII Rules to the extent they are not inconsistent therewith.

(2) The references to various rules in Rule 906(c) shall also include references to Chapter XII Rules 12-23(a) and 12-24(a)(1).

(3) The exception in Rule 910(c) for "the execution and filing of a proof of claim" shall be read to include also "the execution and filing of an acceptance or rejection of a plan" and the reference to Official Forms in that rule shall include a reference to Official Form No. 12-F15.

(4) The reference in Rule 913(b) to "a dischargeable debt" shall be read as "a debt which is or will be provided for by the plan."

(5) The reference in Rule 919(a) to Rule 203(a) shall be read as a reference to Chapter XII Rule 12-23(a).

(6) The reference in Rule 922(b) to Rule 102 shall be read as a reference to Chapter XII Rule 12-5.

NOTES OF ADVISORY COMMITTEE ON RULES

With the changes, substitutions, and translations indicated in this rule and by Rule 12-2, Part IX of the Bankruptcy Rules (Rules 901 to 928 inclusive) applies in Chapter XII cases.

OFFICIAL CHAPTER XII FORMS

[NOTE. These official forms should be observed and used with such alterations as may be appropriate to suit the circumstances. See Bankruptcy Rule 909.]

Form	
12-F1.	Original Petition Under Chapter XII.
12-F2.	Chapter XII Petition in Pending Case.
12-F3.	Verification on Behalf of a Partnership.
12-F4.	Schedules.
12-F5.	Statement of Affairs for Debtor Not Engaged in Business.

Form
12–F6. Statement of Affairs for Debtor Engaged in Business.
12–F7. Order Appointing Trustee or Disbursing Agent and Fixing the Amount of His Bond.
12–F8. Notice to Trustee or Disbursing Agent of His Appointment.
12–F9. Bond of Trustee or Disbursing Agent.
12–F10. Order Approving Trustee's or Disbursing Agent's Bond.
12–F11. Certificate of Retention of Debtor in Possession.
12–F12. Order for First Meeting of Creditors and Related Orders Combined With Notice Thereof and of Automatic Stay.
12–F13. Proof of Claim.
12–F14. Proof of Claim for Wages, Salary, or Commissions.
12–F15. Proof of Multiple Claims for Wages, Salary, or Commissions.
12–F16. Power of Attorney.
12–F17. Order Fixing Time to Reject Modification of Plan Combined With Notice Thereof.
12–F18. Order Confirming Plan.
12–F19. Notice of Order of Confirmation of Plan and Discharge.

FORM NO. 12–F1.

ORIGINAL PETITION UNDER CHAPTER XII

United States District Court
for the ------ District of ------

In re
------ ------ Bankruptcy No. ------
Debtor [*include here all names used by debtor within last 6 years*]

ORIGINAL PETITION UNDER CHAPTER XII

1. Petitioner's post-office address is ------------ --

2. Petitioner has had his principal place of business [*or* has had his principal assets] within this district for the preceding 6 months [*or* for a longer portion of the preceding 6 months than in any other district].

3. No other case under the Bankruptcy Act initiated on a petition by or against petitioner is now pending.

4. Petitioner is qualified to file this petition and is entitled to the benefits of Chapter XII of the Act.

5. Petitioner is insolvent [*or* unable to pay his debts as they mature].

6. A copy of petitioner's proposed plan is attached [*or* petitioner intends to file a plan pursuant to Chapter XII of the Act].

Wherefore petitioner prays for relief in accordance with Chapter XII of the Act.

Signed: ------ ------,
Attorney for Petitioner.

Address: --------------

[*Petitioner signs if not represented by attorney.*]

------ ------
Petitioner.

State of ------------ }
County of ----------- } *ss.*

I, ------ ------, the petitioner named in the foregoing petition, do hereby swear that the statements contained therein are true according to the best of my knowledge, information, and belief.

------ ------,
Petitioner.

Subscribed and sworn to before me on ----------

------ ------,
------ ------
[*Official character.*]

[*Unless the petition is accompanied by a list of all the debtor's creditors and their addresses, the petition must be accompanied by a schedule of his property, a statement of his affairs, and a statement of executory contracts, pursuant to Rule 12–11. These statements shall be submitted on official forms and verified under oath.*]

NOTES OF ADVISORY COMMITTEE ON RULES

This form is a revision of former Official Form No. 53. Numerous changes have been made in the interest of eliminating unnecessary words and reducing the number of formal entries to be made by the petitioner.

Rule 12–9 requires the caption in which the name of the debtor is given to include all the names used by him within 6 years before the filing of the petition.

The recitals in paragraph 2 of the form, which establish the venue for the case, include the possibilities that are appropriate for most petitioners. Other factual bases for choice of venue under Rule 12–13(a) may be shown by minor adaptations of the form.

Attachment of a proposed plan to the petition is optional. See Rule 12–36.

Reference to the schedules and statements which are not part of the petition, are striken from the body of the form, but a note at the foot of the form calls the petitioner's attention to the necessity of filing these papers as provided in Rule 12–11.

Blanks for the signature and address of the petitioner's attorney are added in conformity with Bankruptcy Rule 911(a) made applicable by Rule 12–62. Only the original need be signed and verified, but the copies should be conformed to the original. See Bankruptcy Rule 911(c). Verification of a petition on behalf of a partnership by a member or agent, shall conform to Official Form No. 5 of the Bankruptcy Forms, made applicable by Official Form No. 12–F3.

Additional allegations to be contained in the petition may be required by local rule.

FORM NO. 12–F2. CHAPTER XII PETITION IN PENDING CASE

[*Caption, other than designation, as in Form No. 12–F1*]

CHAPTER XII. PETITION IN PENDING CASE

1. Petitioner's post-office address is ------------ --

2. Petitioner is the bankrupt [*or* debtor] in Bankruptcy Case No. ----, pending in this court.

3. Petitioner is qualified to file this petition and is entitled to the benefits of Chapter XII of the Bankruptcy Act.

4. Petitioner is insolvent [*or* unable to pay his debts as they mature].

5. A copy of petitioner's proposed plan is attached [*or* petitioner intends to file a plan pursuant to Chapter XII of the Act].

Wherefore petitioner prays for relief in accordance with Chapter XII of the Act.

Signed: ------ ------,
Attorney for Petitioner.

Address: ------------------

[*Petitioner signs if not represented by attorney.*]

------ ------,
Petitioner.

State of ------------- }
County of ----------- } *ss.*

I, ------ ------, the petitioner named in the foregoing petition, do hereby swear that the statements contained therein are true according to the best of my knowledge, information, and belief.

------ ------ .
Petitioner.

Subscribed and sworn to before me on ----------

------ ------,
------ ------ .
[*Official character.*]

[*Unless the schedules and statements have already been filed in the pending case they must be filed with this petition or within 15 days thereafter as provided in Rule 12-11. These statements shall be on official forms and verified under oath.*]

Notes of Advisory Committee on Rules

This form is new. Save as indicated below it conforms to Official Form No. 12-F1 and the Note to that form should be consulted.

This petition contains no allegations as to venue, which will already have been made in the petition initiating the pending bankruptcy case. If venue is improper, Bankruptcy Rule 116(b) or Chapter XII Rule 12-13(b)(2) will apply.

Paragraph 2 of this form requires identification of the pending bankruptcy case.

The note at the foot of the form calls the petitioner's attention to the necessity of filing the statements and the schedules if they were not filed in the bankruptcy case, as provided in Rule 12-11.

Attachment of a proposed plan to the petition is optional.

Additional allegations to be contained in the petition may be required by local rule.

FORM NO. 12-F3. VERIFICATION ON BEHALF OF A PARTNERSHIP

[*Form No. 5 of the Bankruptcy Forms is applicable and should be used.*]

Notes of Advisory Committee on Rules

Rule 12-12 requires all petitions to be verified. This form is to be used for the verification on behalf of a partnership. It may be adapted for use in connection with other papers required by these rules to be verified. See the Note to Bankruptcy Rule 911.

FORM NO. 12-F4. SCHEDULES

[*Form No. 6 of the Bankruptcy Forms is applicable and should be used. The word "bankrupt" wherever used in Form No. 6 should be changed to "debtor."*]

Notes of Advisory Committee on Rules

This form is a revision of the Official Forms for schedules A and B accompanying Official Form No. 1. It is intended for use by the debtor who is required to prepare a schedule of property and list of creditors to accompany a petition filed under the Act. See Rule 12-11.

The number of schedules for property has been reduced from 6 to 4 and the number of schedules of debts from 5 to 3 in the interest of simplification. No significant change in the information required to be disclosed is intended by this reduction. Numerous changes of format have been made to permit easier adaptability for individual cases, and columnar headings and categories of claims and property have been revised to make them more comprehensive and clear.

Ledger or voucher references and identification of places where debts were contracted or incurred are no longer required to be entered on the schedules of his debts. To eliminate an overlap of Schedule A-2 with Schedule B-1, which has required inclusion of information as to encumbrances on real property of the estate, the headings in the latter schedule have been revised to make clear that all statements regarding secured claims are to be entered in Schedule A-2. Liabilities on notes and bills heretofore supposed to be entered on Schedules A-4 and A-5 are to be included in Schedule A-3 or, if the creditor is entitled to priority or is secured, on Schedule A-1 or A-2, as the case may be. Elimination of Schedules A-4 and A-5 will effect little or no change in practice.

Schedule B-3, on which choses in action belonging to the estate have heretofore been scheduled, has been merged into Schedule B-2 for personal property, thereby eliminating a needless classification. The space provided in Schedule B-4 for "Property in reversion, remainder, or expectancy, including property held in trust for the debtor or subject to any power or right to dispose of or to charge" has been eliminated, and such property should be included as real property on Schedule B-1 or as personal property on Schedule B-2. Information as to fees paid counsel in contemplation of the filing of a petition heretofore also required to be included in Schedule B-4, is to be obtained by questions included in the Statement of Affairs.

The official forms for the schedules have heretofore required a signature on each of the 11 schedules (A-1 to A-5 and B-1 to B-6) and an oath to accompany the Schedule of Debts as well as another to accompany the Schedule of Property. Schedules are required to be executed and filed in the same number as the petition they accompany. Rule 12-11(a). A single oath for all the schedules requiring no more than one signature by the debtor for the original has been substituted for the multiple subscription requirements heretofore imposed. The oath requires a specification of a number of sheets included in the schedules and an acknowledgment that the affiant has read them. The copies should be conformed to the original as provided in Bankruptcy Rule 911(c). Separate forms of oath are provided for individuals and partnerships.

FORM NO. 12-F5. STATEMENT OF AFFAIRS FOR DEBTOR NOT ENGAGED IN BUSINESS

[*Form No. 7 of the Bankruptcy Forms is applicable and should be used. The word "bankrupt" wherever used in Form No. 7 should be changed to "debtor."*]

[*The term "original petition" as used in that form means the petition filed under Rule 12-6 or, if filed in a pending case, the first petition initiating a case under the Act.*]

Notes of Advisory Committee on Rules

This Statement of Affairs is a revision of Official Form No. 2. Most of the changes are intended to make the requests for information more specific and certain in their references. Thus, the debtor is required to give his social security number to facilitate his identification, particularly by the Internal Revenue Service and other agencies which maintain records by reference to this number. Information as to other names used in the last 6 years serves a similar purpose.

Inquiry as to most transactions and developments affecting the financial condition of the debtor is limited to the year preceding the filing of the petition, and the time span covered by the question regarding general assignments and other modes of general settlement with creditors (formerly #7c, renumbered as #8b) has been reduced from 2 years to one year. The scope of examination at the first meeting or at any other meeting is in no way restricted, of course, by the scope of the inquiries in the Statement of Affairs.

New questions have been added concerning tax refunds (#3), property in the hands of trustees, bailees, and other third persons (#9), repossessions and returns of property by the debtor (#13), losses covered by insurance (#14), and payments or transfers to attorneys (#15). The questions asked in this last paragraph seek information relevant to the examination authorized to be conducted by the court pursuant to Rule 12-26. The reference to sums paid to counsel heretofore included in Schedule B-4 is deleted by this series of proposals.

The question regarding transfers (formerly #10a, now 12a and b) has literally required the debtor to disclose every payment as well as exchange of property during the preceding year. The question has been revised to develop information only as to (1) gifts that exceed the bounds of ordinary and usual presents to family members and charitable contributions, and (2) transfers of realty or tangible personalty. The range of inquiry covers the year before the filing of the petition as before, but no accounting is required by the question as to payments of cash and by check except when out-of-the-ordinary gifts are effected in this way.

Inquiry is made as to relevant writings in numerous instances. Schedule B-6 on which all books, papers, and writings, have heretobefore been listed has been deleted.

The debtor is required to sign only the oath to the statement, but he must verify that he has read the statement as well as that it is true to the best of his knowledge, information, and belief. Only the original need be verified, but the copies must be conformed to the original. See Bankruptcy Rule 911(c). When the schedules and Statement of Affairs are filed simultaneously, as they ordinarily will be (see Rule 12-11), the oaths may be combined, as provided in Bankruptcy Rule 909.

FORM NO. 12-F6. STATEMENT OF AFFAIRS FOR DEBTOR ENGAGED IN BUSINESS

[Form No. 8 of the Bankruptcy Forms is applicable and should be used. The word "bankrupt" wherever used in Form No. 8 should be changed to "debtor."]

[The term "original petition" as used in that form means the petition filed under Rule 12-6 or, if filed in a pending case, the first petition initiating a case under the Act.]

NOTES OF ADVISORY COMMITTEE ON RULES

This is a revision of Official Form No. 3. Most of the changes made in the form are identical or similar to those made in Official Form No. 2 and explained in the note accompanying the Statement of Affairs for a Debtor Not Engaged in Business.

The inquiry regarding tax returns here (#6a) extends back 3 years before the filing of the petition because of the possible relevance of the returns for all 3 years in determining the tax liability of a business debtor for the year in which the petition is filed.

The inclusion of the questions regarding suits, executions, and attachments (#12) cures a *casus omissus* in Official Form No. 3.

The question regarding loans repaid (#13) has been extended to cover payments on installment credit sales of goods and services. The purpose of this question is to develop information regarding possible preferences, and the Statement of Affairs is incomplete in this respect if it refers only to repayments of loans.

Information regarding business leases (#17) will be helpful in determining whether rental arrangements should be terminated or extended and whether the landlord may have a basis for asserting a lien or priority or may be liable for the return of a deposit to the estate.

The question regarding withdrawals (formerly #14, renumbered #19) has been elaborated to get information from individual proprietors comparable to that heretofore sought from partnerships and corporate debtors. This information will supplement that obtained pursuant to the question regarding nonbusiness income (#5), payment of loans (#13), and other kinds of transfers in providing a picture of the disposition of assets during the year preceding the filing of the petition.

The question regarding the membership and management of a partnership or corporation (formerly #15, now #21) has been elaborated to develop information regarding significant changes during the year prior to the filing of the petition. Such information is likely to be of considerable assistance in discovering the reasons for the stringent financial condition of the debtor and in determining the disposition of its assets during the year preceding the filing of the petition.

The debtor is required to sign only the oath to the statement, but he must verify that he has read the statement as well as that it is true to the best of his knowledge, information, and belief. When the schedules and statement of affairs are filed simultaneously, as they ordinarily will be (see Rule 12-11), the oaths may be combined, as provided in Bankruptcy Rule 909. Only the original need be signed and verified, but the copies must be conformed to the original. See Bankruptcy Rule 911(c). Bankruptcy Rules 909 and 911 are made applicable in Chapter XII cases by Rule 12-62.

FORM NO. 12-F7. ORDER APPOINTING TRUSTEE OR DISBURSING AGENT AND FIXING THE AMOUNT OF HIS BOND

[Caption, other than designation, as in Form No. 12-F1]

ORDER APPOINTING TRUSTEE [OR DISBURSING AGENT] AND FIXING THE AMOUNT OF HIS BOND

1. ______ ______, of* __________, is hereby appointed trustee of the estate [*or* disbursing agent for the estate] of the above-named debtor.

2. The amount of the bond of the trustee [*or* disbursing agent] is fixed at $______.

Dated: __________

______ ______,
Bankruptcy Judge.

*State post-office address.

NOTES OF ADVISORY COMMITTEE ON RULES

This form is a revision of Official Form No. 20. With respect to the appointment of the disbursing agent, this form is new.

FORM NO. 12-F8. NOTICE TO TRUSTEE OR DISBURSING AGENT OF HIS APPOINTMENT

[Caption, other than designation, as in Form No. 12-F1]

NOTICE TO TRUSTEE [OR DISBURSING AGENT] OF HIS APPOINTMENT

To ______ ______, of* ____________:

You are hereby notified of your appointment as trustee of the estate [*or* disbursing agent for the estate] of the above-named debtor. The amount of your bond has been fixed at $______.

[The following paragraph is applicable to trustee only]

You are required to notify the undersigned forthwith of your acceptance or rejection of the office of trustee.

Dated: __________

______ ______,
Bankruptcy Judge.

* State post-office address.

NOTES OF ADVISORY COMMITTEE ON RULES

This form is a revision of Official Form No. 22. It is to be used in giving the notice to a trustee required by Rule 12–17(c). While there is no requirement, that a disbursing agent be notified of his appointment, this form is adapted for such use.

FORM NO. 12–F9. BOND OF TRUSTEE OF DISBURSING AGENT

[*Caption, other than designation, as in Form No. 12–F1*]

BOND OF TRUSTEE [OR DISBURSING AGENT]

We, ----------, of* ----------, as principal, and ----------, of* ----------, as surety, bind ourselves to the United States in the sum of $------ for the faithful performance by the undersigned principal of his official duties as trustee of the estate [*or* disbursing agent for the estate] of the above-named debtor.

Dated: ----------

------ ------,
Principal.
------ ------,
Surety.

*State post-office address.

NOTES OF ADVISORY COMMITTEE ON RULES

This form is a simplification of former Official Form No. 23. It may be used in an individual case under Rule 12–19, or, by modification of the caption, the reference in the bond to the debtor, and, where necessary, the reference to the principal, it may be adapted for use in a series of cases when a blanket bond is given. Unless otherwise provided by local rule, the completed bond is to be filed with the referee in accordance with Rule 12–19.

FORM NO. 12–F10. ORDER APPROVING TRUSTEE'S OR DISBURSING AGENT'S BOND

[*Caption, other than designation, as in Form No. 12–F1*]

ORDER APPROVING TRUSTEE'S [OR DISBURSING AGENT'S] BOND

The bond filed by ------ ------ of* ---------- as trustee of the estate [*or* disbursing agent for the estate] of the above-named debtor is hereby approved.

Dated: ----------

------ ------,
Bankruptcy Judge.

* State post-office address.

NOTES OF ADVISORY COMMITTEE ON RULES

Rule 12–19(a) authorizes the court to approve other security than a bond but recordation of an order approving other security would not come within the scope of § 21g. A copy of the petition may, however, be recorded pursuant to § 21g.

FORM NO. 12–F11. CERTIFICATE OF RETENTION OF DEBTOR IN POSSESSION

[*Caption, other than designation, as in Form No. 12–F1*]

CERTIFICATE OF RETENTION OF DEBTOR IN POSSESSION

I hereby certify that the above-named debtor continues in possession of his estate as debtor in possession, no trustee having been appointed or qualified.

Dated: ----------

------ ------,
Bankruptcy Judge.

NOTES OF ADVISORY COMMITTEE ON RULES

Under Rule 12–17 (a) and (b) the trustee in bankruptcy continues in charge of the debtor's estate if the Chapter XII petition is filed in a pending bankruptcy case after such trustee has qualified; otherwise, the debtor is to continue in possession except that, for cause, the court may appoint a trustee. Where the debtor continues in possession, there need be no formal order to that effect. Accordingly, where evidence is required this certificate may be used pursuant to Rule 12–19(c). A copy of this certificate is not, however, within the purview of § 21g of the Act for purposes of recordation and in such cases a copy of the petition itself should be recorded.

This certificate may be adapted for use when the debtor is designated as debtor in possession pursuant to Rule 12–17.

FORM NO. 12–F12. ORDER FOR FIRST MEETING OF CREDITORS AND RELATED ORDERS, COMBINED WITH NOTICE THEREOF AND OF AUTOMATIC STAY

[*Caption, other than designation, as in Form No. 12–F1*]

ORDER FOR FIRST MEETING OF CREDITORS COMBINED WITH NOTICE THEREOF AND OF AUTOMATIC STAY

To the debtor, his creditors, and other parties in interest:

--,
of* ----------, having filed a petition on ---------- stating that he desires to effect a plan under Chapter XII of the Bankruptcy Act, it is ordered, and notice is hereby given, that:

1. The first meeting of creditors shall be held at ----------, on ----------, at ------ o'clock --m.;

2. The debtor shall appear in person [*or, if the debtor is a partnership, by a general partner*] before the court at that time and place for the purpose of being examined;

3. The hearing on confirmation of a plan shall be held at a date to be later fixed [*or* at a date to be fixed at the first meeting *or* at ---------- on ---------- at ------ *or* immediately following the conclusion of the first meeting].

4. Creditors may file written objections to confirmation at any time prior to confirmation, [*or* ---------- is fixed as the last day for the filing of objections to confirmation, *or* objections to confirmation may be filed by a date to be later fixed].

You are further notified that:

The meeting may be continued or adjourned from time to time by order made in open court, without further written notice to creditors.

At the meeting the creditors may file their claims and acceptances of the plan, examine the debtor as permitted by the court, and transact such other business as may properly come before the meeting.

The filing of the petition by the debtor above named operates as a stay of the commencement or continuation of any court proceeding to enforce any lien on the property of the debtor, and of any court proceeding commenced for the purpose of rehabilitation of the debtor or the liquidation of his estate, as provided by Rule 12-43.

The debtor has filed or will file a schedule of debts pursuant to Rule 12-11. Any scheduled creditor whose claim is not scheduled as disputed, contingent, or unliquidated as to amount, may, but need not, file a proof of claim in this case. All other creditors desiring to participate must file their proofs of claim on or before ----------, which date is hereby fixed as the last day for filing a proof of claim [*or, if appropriate,* on or before a date to be later fixed of which you will be notified]. Any creditor who desires to rely on the list has the responsibility for determining that he is accurately scheduled.

A claim may be filed in the office of the undersigned bankruptcy judge on an official form prescribed for a proof of claim.

[*If appropriate*] ------ ------ of* ---------- has been appointed trustee of the estate of the above-named debtor.

Dated: ----------

------ ------,
Bankruptcy Judge.

*State post-office address.

NOTES OF ADVISORY COMMITTEE ON RULES

Insofar as this form embodies an order, it is new. Insofar as it embodies a notice, it revises former Official Form No. 54.

As provided in Rules 12-36 and 12-37, acceptances may be obtained by the debtor before or after the filing of the petition and may be filed by him with the court on behalf of the accepting creditor. A copy of the plan, if any, filed by the debtor should be attached to this combined order and notice.

The inclusion in the official form of information regarding the effect of the Chapter XII petition as a stay, the time to file objections to confirmation, and the provisions for filing claims is new. It should be helpful to creditors and reduce the number of inquiries directed at referees' offices by recipients of the notice of the first meeting. Creditors and claims as used in the Chapter XII Rules and Official Forms include secured and unsecured creditors and claims.

In unusual cases when the court fixes, at an early time, the date by which complaints to determine the dischargeability of debts must be filed, the date so fixed can be added to this form.

FORM NO. 12-F13. PROOF OF CLAIM

[*Form No. 15 of the Bankruptcy Forms is applicable and should be used. The word "bankrupt" wherever used in Form No. 15 should be changed to "debtor."*]

NOTES OF ADVISORY COMMITTEE ON RULES

This form combines the functions of Official Form Nos. 28, 29, 30, and 31. It may be used by any claimant, including a wage earner for whom short forms have been specially provided (Forms No. 12-F14 and 12-F15), or by an agent or attorney for any claimant. Such a combined form is commonly used in practice.

In order to facilitate confirmation of the plan and distribution to creditors, paragraph 9 also requires that any written security agreement (if not included in the writing upon which the claim is founded, which is required by paragraph 4 to be attached) be attached to the proof of claim or that the reasons why it cannot be attached be set forth. Paragraph 9 further requires an indication of the date and the office or offices in which notice of the security interest has been filed or recorded. The information so required will expedite determination of the validity and perfection of security interests. Satisfactory evidence of perfection, which is to accompany the proof of claim, would include a duplicate of an instrument filed or recorded together with an indication of the date or dates when and the office or offices where filed or recorded, a duplicate of a certificate of title when a security interest is perfected by notation on such a certificate, a statement that pledged property has been in the possession of the secured party since a specified date, or a statement of the reasons why no action was necessary for perfection.

Paragraph 10, requiring explicitness as to whether the claim is filed as a general, priority, or secured claim, will also facilitate administration and minimize troublesome litigation over the question whether a proof or claim was intended as a waiver of security. See *e. g., United States National Bank in Johnstown v. Chase National Bank,* 67 S.Ct. 1041, 1045, 331 U.S. 28, 35-36, 91 L.Ed. 1320, 1325, 1326 (1947); 3 Collier ¶ 57.07[3.1] (1961).

FORM NO. 12-F14. PROOF OF CLAIM FOR WAGES, SALARY, OR COMMISSIONS

[*Form No. 16 of the Bankruptcy Forms is applicable and should be used. The word "bankrupt" wherever used in Form No. 16 should be changed to "debtor."*]

NOTES OF ADVISORY COMMITTEE ON RULES

This form is new. It is an adaptation of Official Form No. 12-F13 for the use of claimants for personal earnings in Chapter XII cases. Its limited purpose permits elimination of recitals that are appropriate for other classes of claimants.

FORM NO. 12-F15. PROOF OF MULTIPLE CLAIMS FOR WAGES, SALARY, OR COMMISSIONS

[*Form No. 16A of the Bankruptcy Forms is applicable and should be used. The word "bankrupt" wherever used in Form No. 16A should be changed to "debtor."*]

FORM NO. 12-F16. POWER OF ATTORNEY

[*Caption, other than designation, as in Form No. 12-F1*]

POWER OF ATTORNEY

To ---------- of* ----------, and ---------- of* ----------:

The undersigned claimant hereby authorizes you, or any one of you, as attorney in fact for the undersigned and with full power of substitution, to receive distributions and in general to perform any act not constituting the practice of law for the undersigned in all matters arising in this case.

Dated: ----------

Signed: ------
[*If appropriate*] By: ------
as ------
Address: ------

[*If executed by an individual*]

Acknowledged before me on --------------------

[*If executed on behalf of a partnership*]

Acknowledged before me on --------, by ------, who says that he is a member of the partnership named above and is authorized to execute this power of attorney in its behalf.

[*If executed on behalf of a corporation*]

Acknowledged before me on ---------- by ------, who says that he is ---------- of the corporation named above and is authorized to execute this power of attorney in its behalf.

------,

[*Official character.*]

*State post-office address.

NOTES OF ADVISORY COMMITTEE ON RULES

Bankruptcy Rule 910(c), made applicable by Rule 12-62, requires a power of attorney to be prepared substantially in conformity with this form, but it may grant either more or less authority in accordance with the language used.

While a power of attorney may of course be executed in favor of an attorney at law who is also retained as such to represent the creditor executing the form, the power of attorney does not purport to confer the right to act as an attorney at law. The corollary is that one not an attorney may act under a power of attorney within the limitations prescribed in the form.

While Bankruptcy Rule 910(c) as modified by Rule 12-62(3) does not require a written power of attorney for the purpose of filing a proof of claim or voting on a plan, Official Form No. 12-13 requires a partner, corporate officer or other agent filing a proof of claim to state that he is authorized to file the claim.

The statement respecting authority required in the acknowledgment accompanying a power of attorney executed on behalf of a partnership or corporation is in lieu of the requirement of General Order 21(5) heretofore existing that such an instrument be accompanied by an oath that the person executing is a member of the partnership or a duly authorized officer of the corporation.

FORM NO. 12-F17. ORDER FIXING TIME TO REJECT MODIFICATION OF PLAN COMBINED WITH NOTICE THEREOF

[*Caption, other than designation, as in Form No. 12-F1*]

ORDER FIXING TIME TO REJECT MODIFICATION OF PLAN COMBINED WITH NOTICE THEREOF

To the debtor, his creditors and other parties in interest:

The debtor having filed a modification of his plan on ----------, it is ordered, and notice is hereby given that:

1. ---------- is fixed as the last day for filing a written rejection of the modification.

2. A copy [*or* a summary] of the modification is attached hereto. Any creditor who has accepted the plan and who fails to file a written rejection of the modification within the time above specified shall be deemed to have accepted the plan as modified.

Dated: ----------

------ ------,

Bankruptcy Judge.

NOTES OF ADVISORY COMMITTEE ON RULES

This form, which is new, combines the order and notice provided for by Rule 12-39 where the debtor proposes a modification of a plan or one is proposed by a creditor.

FORM NO. 12-F18. ORDER CONFIRMING PLAN

[*Caption, other than designation, as in Form No. 12-F1*]

ORDER CONFIRMING PLAN

The plan filed by ------ ------ on ----------, [*if appropriate,* as modified by a modification filed on ----------,] having been transmitted to creditors; and

The deposit required by Chapter XII of the Bankruptcy Act having been made; and

It having been determined after hearing on notice:

1. That the plan has been accepted in writing by the creditors whose acceptance is required by law [*or* by all creditors affected thereby]; and

2. That the plan has been proposed and its acceptance procured in good faith, and not by any means, promises, or acts forbidden by law [and, *if the plan is accepted by less than all affected creditors,* the provisions of Chapter XII of the Act have been complied with, the plan is for the best interests of the creditors and is feasible, the debtor has not been guilty of any of the acts or failed to perform any of the duties which would be a bar to the discharge of a bankrupt];

It is ordered that:

A. The plan filed by ------ ------ on ----------, a copy of which is attached hereto, is confirmed.

B. Except as otherwise provided or permitted by the plan or this order:

(1) The above-named debtor is released from all dischargeable debts;

(2) Any judgment heretofore or hereafter obtained in any court other than this court is null and void as a determination of the personal liability of the debtor with respect to any of the following:

(a) debts dischargeable under § 17 a and b of the Act;

(b) [*if the court has fixed a time for the filing of complaints under* § *17c(2) of the Act pursuant to Rule 12-47*] unless heretofore or hereafter determined by order of this court to be nondischargeable, debts alleged to be excepted from discharge under clauses (2) and (4) of § 17a of the Act;

(c) [*if the court has fixed a time for the filing of complaints under* § *17c(2) of the Act pursuant to Rule 12-47*] unless heretofore or hereafter determined by order of this court to be nondischargeable, debts alleged to be excepted from discharge under clause (8) of § 17a of the Act, except those debts on which there was an action pending on ----------, the date when the first petition was filed initiating a case under the Act, in which a right to jury trial existed and a party has either made a timely demand therefor or has submitted to this court a signed statement of intention to make such a demand;

(d) debts determined by this court to be discharged under § 17c(3) of the Act.

C. All creditors whose debts are discharged by this order and all creditors having claims of a type referred to in paragraph (B)(2) above are enjoined from instituting or continuing any action or employing any process to collect such debts as personal liabilities of the above-named debtor.

Dated: ----------

------ ------,

Bankruptcy Judge.

NOTES OF ADVISORY COMMITTEE ON RULES

This form combines and revises former Official Forms Nos. 56 and 57 to comply with Rule 12-38, and to take account of the 1970 amendments which added §§ 14f, 17b, and 17c and amended § 17a of the Act. Under § 476 confirmation of a plan operates to release the debtor from his dischargeable debts except as the plan or order confirming it may provide otherwise. This form thus includes the order of discharge. Notice of the order of confirmation and order of discharge is provided for on a separate form which is more easily transmitted to creditors. The court may, however, combine the two forms and provide for the notice in this form.

This form may be used whether a plan has been accepted by all affected creditors or less than all affected creditors.

FORM NO. 12-F19. NOTICE OF ORDER OF CONFIRMATION OF PLAN AND DISCHARGE

[*Caption, other than designation, as in Form No. 12-F1*]

NOTICE OF ORDER OF CONFIRMATION OF PLAN AND DISCHARGE

To the debtor, his creditors, and other parties in interest:

Notice is hereby given of the entry of an order of this court on ----------, confirming the plan dated ----------, and providing further that:

A. Except as otherwise provided or permitted by the plan or such order:

(1) The above-named debtor is released from all dischargeable debts;

(2) Any judgment theretofore or thereafter obtained in any court other than this court is null and void as a determination of the personal liability of the debtor with respect to any of the following:

(a) debts dischargeable under § 17a and b of the Bankruptcy Act;

(b) [*if the court has fixed a time for the filing of complaints under § 17c(2) of the Act pursuant to Rule 12-47*] unless theretofore or thereafter determined by order of this court to be nondischargeable, debts alleged to be excepted from discharge under clauses (2) and (4) of § 17a of the Act;

(c) [*if the court has fixed a time for the filing of complaints under § 17c(2) of the Act pursuant to Rule 12-47*] unless theretofore or thereafter determined by order of this court to be nondischargeable, debts alleged to be excepted from discharge under clause (8) of § 17a of the Act, except those debts on which there was an action pending on ----------, the date when the first petition was filed initiating a case under the Act, in which a right to jury trial existed and a party has either made a timely demand therefor or has submitted to this court a signed statement of intention to make such demand;

(d) debts determined by this court to be discharged under § 17c(3) of the Act.

B. All creditors whose debts are discharged by said order and all creditors having claims of a type referred to in paragraph (A)(2) above are enjoined from instituting or continuing any action or employing any process to collect such debts as personal liabilities of the above-named debtor.

Dated: ----------

------ ------,
Bankruptcy Judge.

NOTES OF ADVISORY COMMITTEE ON RULES

This form is new. It is to be used to notify creditors of the entry of the order of confirmation and is to be mailed within 30 days thereof pursuant to Rules 12-38 and 12-42. Additionally, the notice informs the creditors of the discharge provisions of § 14f of the Act, particularly those enjoining suits on discharged debts. While this form is separate from the confirmation order, Form No. 12-F18, the order and notice may be combined in one form if the court so desires.

TITLE VII.—CHAPTER XIII RULES

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II.	Plan and Proceedings Relating Thereto; Notices to Creditors; Creditors' Meetings; Trustees; Examinations; Attorneys and Accountants	13-201
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Rule
13-1. Scope of Chapter XIII Rules and Forms; Short Title.
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13-101. Commencement of Chapter XIII Case.
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Rule
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13-201. Filing of Plan.
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Rule
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PART VIII. APPEAL TO DISTRICT COURT

13-801. Appeal to District Court.

PART IX. GENERAL PROVISIONS

13-901. General Provisions.

Rule 13-1. Scope of Chapter XIII Rules and Forms; Short Title.

The rules and forms in this Title VII govern the procedure in courts of bankruptcy in cases under Chapter XIII of the Bankruptcy Act. These rules may be known and cited as the Chapter XIII rules. These forms may be known and cited as the Official Chapter XIII Forms.

NOTES OF ADVISORY COMMITTEE ON RULES

A "Chapter XIII case," as defined in Rule 13-101, is one wherein a petition has been filed by a person seeking relief under Chapter XIII of the Bankruptcy Act. The case includes all of the proceedings and matters which arise in connection with the case and of which the court of bankruptcy is given jurisdiction by Chapter XIII and incorporated provisions of Chapter I-VII of the Act. See § 602 of the Act. The rules and forms in this Title VII do not apply to a case initiated under Chapter I-VII of the Act unless a Chapter XIII petition is filed in a pending bankruptcy case pursuant to Rule 13-104, to a case ordered to proceed under Chapter I-VII, nor to a case initiated under any of the other debtor-relief chapters (VIII-XII). Nor do these rules prescribe except incidentally the practice for actions or "plenary proceedings" brought in state courts or federal district courts to determine controversies that arise in connection with a Chapter XIII case.

"Courts of bankruptcy" are defined in § 1(10) of the Brankruptcy Act, 11 U.S.C. § 1(10), to "include the United States district courts and the district courts of the Territories and possessions to which this Act is or may hereafter be applicable." (References to the Bankruptcy Act hereinafter will be the Act and will omit citations to Title 11 of the United States Code). The courts of bankruptcy clearly include the district courts of Guam and the Virgin Islands. 1 Collier, *Bankruptcy* ¶ 1.10 at 71-72 n.22 (14th ed. rev. 1968), citing relevant statutory provisions. (Hereinafter citations to the Collier treatise will omit the title and references to the edition but will include the date of the revision of the cited material.) It is problematical whether the District Court for the District of the Canal Zone is a bankruptcy court, but it appears that this court has not undertaken to act as a court of bankruptcy. 1 Collier, *supra* at 72.

Rule 13-2. Meanings of Words in Bankruptcy Rules When Applicable in Chapter XIII Case.

The following words and phrases used in the Bankruptcy Rules made applicable in Chapter XIII cases by these rules have the meanings herein indicated, unless they are inconsistent with the context:

(1) "Bankrupt" means "debtor."

(2) "Bankruptcy" or bankruptcy case" means "Chapter XIII case."

(3) "Receiver," "trustee," "receiver in bankruptcy," or "trustee in bankruptcy" means the "trustee" in the Chapter XIII case.

NOTES OF ADVISORY COMMITTEE ON RULES

These rules make some of the Bankruptcy Rules applicable in Chapter XIII cases and this rule indicates the substitution or translation of certain terms that is necessary for this purpose.

PART I.—PETITION AND PROCEEDINGS RELATING THERETO

Rule 13-101. Commencement of Chapter XIII Case.

A Chapter XIII case is commenced by filing a petition with the court seeking relief under Chapter XIII of the Act.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule prescribes the mode for beginning a Chapter XIII case, whether by filing an original petition or a petition in a pending bankruptcy case. Original petitions are governed by Rule 13-103 and petitions in pending bankruptcy cases by Rule 13-104, which rules are derived from §§ 621 and 622 of the Act. A proceeding initiated by a petition is designated a "Chapter XIII case" for the purpose of these rules. The term embraces all the controversies determinable by the court of bankruptcy and all the matters of administration arising during the pendency of the case. The word "proceeding" as used in these rules generally refers to a litigated matter arising within a case during the course of administration. See particularly Bankrupty Rule 703, made applicable by Rule 13-701. The rule assumes the continuing applicability of the definition of "petition in §§ 1(24) and 606(6) of the Act, but as used in the rules in this Title, the word refers to the document commencing a Chapter XIII case. The place of filing a petition is more fully particularized in Bankruptcy Rule 509, made applicable by Rule 13-501.

Rule 13-102. Reference of Cases; Withdrawal of References and Assignment.

(a) Reference.

Upon the filing of a petition the clerk shall refer the case forthwith to a referee or, if a local law so provides, to more than one referee concurrently. Thereafter all proceedings in the case shall be before the referee except as otherwise provided by subdivision (b) of this rule, by Rule 13-407(c), by Bankruptcy Rule 920, by § 2a(15) of the Act when a complaint seeks an injunction to restrain a court, by § 43c of the Act when the office of the referee is vacant, and by the provisions in the Act and Part

VIII of the Bankruptcy Rules governing appeals from judgments of the referee.

(b) Withdrawal of Reference and Assignment.

The district judge may, at any time, for the convenience of parties or other cause, withdraw a case in whole or in part from a referee and either act himself or assign the case or part thereof to another referee in the district.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (a). The first sentence of subdivision (a) of this rule is derived from §§ 22a and 631 of the Act, but deletes the clause authorizing the judge or judges to modify the provision for automatic reference. The practice, which has become established in some districts, of referring cases concurrently to 2 or more referees of the court is recognized as proper by this rule.

The second sentence of subdivision (a) is adapted from General Order 12(1). A district judge may act in a Chapter XIII case only when he withdraws a case from the referee pursuant to subdivision (b); when the office of referee becomes vacant as provided in § 43c of the Act; when the trial of an issue is placed on the jury calendar of the district court pursuant to Rule 13-407(c); when the district judge hears and determines issues under Bankruptcy Rule 920 on a certification that contempt has been committed; when a complaint seeks injunctive relief against another court, which may be granted under § 2a(15) of the Act only by a judge; and when a judgment of the referee is being reviewed on appeal pursuant to §§ 2a(10) and 39c of the Act. Part VIII of the Bankruptcy Rules, made applicable by Rule 13-801, governs the procedure on review by the district judge of judgments of the referee in Chapter XIII cases. Sections 24a and b of the Act and the Federal Rules of Appellate Procedure govern the procedure on appeals to the courts of appeals, and § 24c of the Act and the Rules of the Supreme Court of the United States apply to review of judgments by that Court in Chapter XIII cases. As pointed out in the Note to Bankruptcy Rule 701, these rules do not govern plenary actions in the district courts of the United States or the state courts.

Subdivision (b) consolidates the provisions for transfer of a case from one referee to another in § 22b of the Act and for withdrawal of a reference in § 43c of the Act. The withdrawal and reassignment may be on motion or on the court's own initiative. Cause for withdrawal of a reference includes the statutory grounds specified in § 43c, *viz.*, temporary absence or disqualification of the referee and the need for expediting the business of the court. As noted above, § 43c continues to govern the situation in which a referee's office is vacant. Subdivision (b) makes explicit what is implied by the statutory provisions, *viz.*, that the judge may assign or withdraw a part as well as the whole of a case from a referee. See *In re Press Printers & Publishers, Inc.*, 12 F.2d 660, 664–65 (3d Cir. 1926), cert. denied, 276 U.S. 633 (1928). If the reason for assignment or withdrawal ceases to be operative, the case or proceeding may be remanded to the same referee. In district courts having more than one judge the authority conferred by this rule should be exercised according to the rules and orders of the court as provided by 28 U.S.C. § 137.

Subdivision (b) governs only the assignment of a case or proceeding to a referee within the territorial jurisdiction of the court. *Cf. In re Schenectady Engineering & Construction Co.*, 147 Fed. 868 (N.D.N.Y. 1906). The transfer of a case to another district is dealt with in Rule 13-110 and the transfer of an adversary proceeding to another district is governed by Bankruptcy Rule 782, made applicable by Rule 13-701. Section 43c of the Act governs the assignment of a referee from without the district.

Rule 13-103. Original Petition.

An original petition under Chapter XIII of the Act shall conform substantially to Official Form No. 13-1. An original and 2 copies of the petition shall be filed, unless a different number of copies is required by local rule.

NOTES OF ADVISORY COMMITTEE ON RULES

Official Form No. 13-1 (Original Petition Under Chapter XIII) is a revision and simplification of Official Form No. 58. It is designed for use when no bankruptcy case is pending by or against the debtor. Although no copy of the petition is required to be served on any adverse party, the rule continues the requirement of § 59c of the Act that the petition be filed in triplicate, but a local rule may modify the requirement. *Cf.* General Order 55(3). Only the original need be signed and verified, but the copy must be conformed to the original. See Bankruptcy Rule 911(c), made applicable by Rule 13-901. The petition must be filed with the clerk as provided in Bankruptcy Rule 509, made applicable by Rule 13-501. As provided in Rule 13-401, the filing of the petition acts as a stay of other proceedings against the petitioner.

Rule 13-104. Petition in Pending Bankruptcy Case.

If a bankruptcy case is pending by or against the debtor, any petition under Chapter XIII shall be filed therein and may be filed before or after adjudication. Such petition shall conform substantially to Official Form No. 13-4. An original and 2 copies of the petition shall be filed, unless a different number of copies is required by local rule. The filing of the petition shall act as a stay of adjudication or of administration of the estate in bankruptcy. The Chapter XIII case shall be deemed originally commenced as of the date of the filing of the petition in the pending bankruptcy case.

NOTES OF ADVISORY COMMITTEE ON RULES

Official Form No. 13-4 (Chapter XIII Petition in Pending Bankruptcy Case) is new. It is designed for use where a bankruptcy case is pending on a petition by or against the debtor and is to be filed with the court in which the bankruptcy case is pending. See Rule 13-110(a). Although no copy of the petition is required to be served on any adverse party, the rule continues the requirement of § 59c of the Act that the petition be filed in triplicate, but a local rule may modify the requirement. *Cf.* General Order 55(3). Only the original need be signed and verified, but the copies must be conformed to the original. See Bankruptcy Rule 911(c), made applicable by Rule 13-901. Since the bankruptcy case will have been referred to a referee pursuant to Bankruptcy Rule 102(a), Bankruptcy Rule 509(b), made applicable by Rule 13-501, requires the Chapter XIII petition to be filed with the referee unless otherwise directed by local rule or order. The rule incorporates the provision of present § 625 of the Act that a petition filed in a pending bankruptcy case shall act as a stay of adjudication or of administration of the estate. As provided in Rule 13-401, the filing of the petition also acts as a stay of other proceedings against the petitioner. The purpose of the last sentence of the rule is to protect those rights that develop on the filing of a petition commencing any case under the Bankruptcy Act. This rule is not intended to invalidate any action taken in the superseded bankruptcy case before it was converted to a Chapter XIII case.

Rule 13-105. Caption of Petition.

The caption of every petition shall comply with Bankruptcy Rule 904(b). In addition the caption shall include the name and social security number of the debtor and all other names used by him within 6 years before the filing of the petition.

NOTES OF ADVISORY COMMITTEE ON RULES

The second sentence of this rule requires the use of the debtor's social security number and adopts a feature as to other names used by the debtor now found in some local rules. See, *e.g.*, N.D. Ill. Bankr. R.5(B)(2); S.D. & E.D.N.Y. Bankr. R.1(b). The social security number and additional names of the debtor are also required to appear in the caption of each notice to creditors. See Rule 13-203(f).

Rule 13-106. Filing Fees.

(a) General Requirement.

Unless the petition is filed under Rule 13-104 and the filing fees have been paid or their payment in installments has been ordered pursuant to Bankruptcy Rule 107, and except as otherwise provided in subdivision (b), every petition shall be accompanied by the prescribed filing fees.

(b) Payment of Filing Fees in Installments.

(1) *Application for Permission to Pay Filing Fees in Installments.* A petition shall be accepted for filing by the clerk of the district court if accompanied by an application signed by the petitioner for permission to pay all or a part of the filing fees in installments. The application shall state that the applicant is unable to pay the filing fees except in installments, the proposed terms of such installment payments, and that the applicant has paid no money and transferred no property to his attorney for services in connection with the Chapter XIII case or any pending bankruptcy case. The application shall be filed in duplicate, one copy for the clerk and one for the bankruptcy judge.

(2) *Action on Application.* At or prior to the first meeting of creditors, if any part of the filing fees remains unpaid, the court after a hearing may make an order permitting payment of the filing fees in installments under the plan or otherwise to the clerk of the district court, and fixing the number of installments and the amount and date of payment of each installment. The number of installments permitted shall not exceed 4, and the final installment shall be payable not later than 4 months after the filing of a petition under Rule 13-103 or Rule 13-104. For cause shown, however, the court may extend the time for payment of any installment to a date not later than 6 months after the date of filing of such petition.

(3) *Postponement of Attorney's Fees.* Where payment of filing fees in installments is authorized the debtor shall make no payment and transfer no property to his attorney. Any award of compensation to the attorney for services in connection with the Chapter XIII case or any pending bankruptcy case shall be governed by Bankruptcy Rule 219 and shall be paid pursuant to Rule 13-309.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (a). If the Chapter XIII petition is filed pursuant to Rule 13-104 in a pending bankruptcy case the filing fees may have been paid at the time of the filing of the petition in bankruptcy or an order may have been entered for their payment in installments pursuant to Bankruptcy Rule 107. If the fees have not yet been paid and no order for installment payments has yet been entered at the time of the filing of a petition under Rule 13-104, the provisions of this rule apply as they do when the petition is filed under Rule 13-103. Filing fees for original petitions under Chapter XIII are prescribed by § 624(2) of the Act. Additional fees and charges may be prescribed in accordance with schedules and regulations approved by the Judicial Conference of the United States pursuant to §§ 40c (2) and (3) and 633(2) of the Act and 28 U.S.C. § 1914(b).

Subdivision (b) is a revision of paragraph (4) of General Order 35. The payment of filing fees in installments pursuant to the provisions of this general order has been explicitly authorized by §§ 624(2) and 633(2) of the Act. The verification requirement imposed by the general order has been eliminated in conformity with the policy of Rule 11 of the Federal Rules of Civil Procedure. The subdivision allows the court to act on the application in advance of the first meeting or at that meeting. Reference in General Order 35(4) to "any adjournment" of the first meeting of creditors is omitted from the rule as unnecessary since an adjournment continues the first meeting. The administrative cost of installments in excess of 4 is disproportionate to the benefits conferred, and prolongation of the period of payment beyond 6 months causes undesirable delays in administration. Paragraph (2) accordingly imposes a maximum of 4 on the number of installments and reduces the period of installment payments allowable on an original application from 6 to 4 months. Only in extraordinary cases should it be necessary to give an applicant an extension beyond the 4 months allowable on the original application. The requirement of paragraph (3) that when payment of fees in installments is authorized the debtor shall pay no money and transfer no property to his attorney for services in connection with the Chapter XIII case or any pending bankruptcy case is an adaptation of the rule declared for bankruptcy cases in *In re Latham*, 271 Fed. 538 (S.D.N.Y. 1921), and *In re Darr*, 232 Fed. 415 (N.D. Cal. 1916). This has also been a local rule applicable to Chapter XIII proceedings in a number of districts. *E.g.*, S.D.Cal. Bankr. R. 223(c); D.Kan. Bankr. R. 10(c); N.D. Ohio, Bankr. R. 11(b) and 18. Bankruptcy Rule 219 governs allowances to attorneys (see Rule 13-207) and Rule 13-309 governs payment of such allowances.

Official Form No. 13-2 provides a form of application for permission to delay payment of filing fees. Official Form No. 13-3 provides a form of order for delayed payment.

Rule 13-107. Chapter XIII Statement.

(a) Chapter XIII Statement Required.

The debtor shall file with the court a Chapter XIII Statement prepared in the manner prescribed by Official Form No. 13-5. The number of copies of the statement shall correspond to the number of copies of the petition required by these rules.

(b) Time Limits.

The Chapter XIII Statement shall be filed with the petition or within 10 days thereafter. On application, the court may grant up to 10 additional days for filing the statement; any further extension may be granted only for cause shown and on such notice as the court may direct.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (a). This rules simplifies the requirements of §§ 7a(8) and (9) and 6241(1) of the Act. The requirement of § 624(1) that a statement of executory contracts be filed in every case is eliminated although Rule 13-402 authorizes the court to require the filing of such a list in a particular case if needed. A single Chapter XIII Statement is substituted for the schedules and Statement of Affairs. The cited clauses of § 7a have required the schedules and Statement of Affairs to be filed in triplicate, and § 59c of the Act has required petitions to be filed in the same number. Rules 13-103 and 13-104 require an original and two copies of the petition to be filed, unless a different number of copies is required by local rule. Petition must be accompanied by a copy of the Chapter XIII Statement. Only the original of the Chapter XIII Statement need be signed and verified, but the copies must be conformed to the original. See Bankruptcy Rule 911(c), made applicable by Rule 13-901. Since the Chapter XIII Statement contains information not included in the schedules and Statements of Affairs required for bankruptcy cases, the Chapter XIII Statement must be filed even though the petition is filed under Rule 13-104 and schedules and a Statement of Affairs have already been filed in the pending bankruptcy case.

Subdivision (b) eliminates the requirements of § 624(1) of the Act of applying for and obtaining an extension of time from the court, and of filing of a list of creditors and a summary of assets and liabilities, as conditions to any delay in the filing of more detailed information. A debtor frequently has urgent need for relief available under Chapter XIII, and allowing him up to 10 days in which to provide the information required in the Chapter XIII Statement will be less productive of administrative inconvenience and delay than the present requirement that an extension be granted only on application. The list of creditors and summary of assets and liabilities serves no function at this point in a Chapter XIII case. Under Rule 13–204 the first meeting of creditors is not called until a plan is filed and under Rule 13–201 the plan must be filed within 10 days after the filing of a petition unless an extension is granted for cause shown. Extensions of time for filing the Chapter XIII Statement beyond the 10-day-period alowed by the first sentence of subdivision (b) and beyond the discretionary extension of up to 10 additional days authorized by the first clause of the last sentence of subdivision (b) are governed by the last clause of that sentence and by Bankruptcy Rule 906(b), made applicable by Rule 13–901.

Rule 13–108. Verification of Petitions and Chapter XIII Statements.

All petitions, Chapter XIII Statements, and amendments thereto shall be verified.

Notes of Advisory Committee on Rules

This rule adopts requirements prescribed by §§ 7a(8), and 18c of the Act. Only the original need be signed and verified, but copies must be conformed to the original. See Bankruptcy Rule 911(c), made applicable by Rule 13–901.

Rule 13–109. Amendments of Petitions and Chapter XIII Statements.

A petition or a Chapter XIII Statement may be amended as a matter of course at any time before the case is closed. The court may, on application or motion of any party in interest or on its own initiative, order any petition or statement to be amended. Every amendment under this rule shall be filed in the same number as required of the original paper, and the court shall give notice of the amendment to such persons as it may designate.

Notes of Advisory Committee on Rules

General Order 11, from which this rule is principally derived, has required an application for leave to amend a petition or schedule. While the first sentence of this rule adopts a permissive approach to amendment of a petition or Chapter XIII Statement, it contemplates that every amendment will be brought to the attention of the court so that it may determine who, if anyone, should be notified of the amendment. A notice to the trustee is appropriate whenever the debtor amends his Chapter XIII Statement. The second sentence of the rule is adapted from § 39a(3) of the Act. An amendment will ordinarily be filed with the referee. See Bankruptcy Rule 509, made applicable by Rule 13–501. If a copy of the petition or statement being amended is retained by the clerk, a copy of each amendment should be transmitted by the referee to the clerk. If a Chapter XIII Statement is amended to include an additional creditor's claim, the effect on the dischargeability of the creditor's claim is governed by § 17a(3) and § 660 or § 661 of the Act, as applicable.

Rule 13–110. Venue and Transfer.

(a) Proper Venue.

(1) *Single Petitions.* A single petition may be filed pursuant to Rule 13–103 in the district where the petitioner has his principal place of employment, residence, or domicile. A single petition filed pursuant to Rule 13–104 shall be filed with the court in which the bankruptcy case is pending.

(2) *Joint Petitions.* A joint petition authorized by Rule 13–111 (a) and filed pursuant to Rule 13–103 may be filed in a district of proper venue for either petitioner under paragraph (1) of this subdivision. A joint petition authorized by Rule 13–111(a) and filed pursuant to Rule 13–104 may be filed in a court in which either petitioner is a bankrupt in a pending bankruptcy case.

(b) Transfer of Cases; Dismissal or Retention When Venue Improper.

(1) *When Venue Proper.* Although a petition is filed in accordance with subdivision (a) of this rule, the court may, after hearing on notice to the petitioner or petitioners and such other persons as it may direct, in the interest of justice and for the convenience of the parties, transfer the case to any other district. The transfer may be ordered at or before the first meeting of creditors either on the court's own initiative or on motion of a party in interest but thereafter only on a timely motion.

(2) *When Venue Improper.* If a petition is filed in a wrong district, the court may, after hearing on notice to the petitioner or petitioners and such other persons as it may direct, dismiss the case or, in the interest of justice and for the convenience of the parties, retain the case or transfer it to any other district. Such an order may be made at or before the first meeting of creditors either on the court's own initiative or on motion of a party in interest but thereafter only on a timely motion. Notwithstanding the foregoing, the court may without a hearing retain a case filed in wrong district if no objection is raised.

(c) Procedure When Petitions Involving the Same Debtor Are Filed in Different Courts.

If petitions commencing Chapter XIII cases or a Chapter XIII case and any other case under the Act are filed in different districts, by or against the same debtor, the court in which the first petition is filed shall, after hearing on motion and notice to the petitioners and such other persons as the court may designate, determine the court in which the case should proceed as a Chapter XIII case in the interest of justice and for the convenience of the parties. The proceedings on the other petitions shall be stayed by the courts in which such petitions have been filed until such determination is made. Thereafter all the courts in which petitions have been filed shall proceed in accordance with the determination.

(d) Reference of Transferred Cases.

A case transferred under this rule shall, in accordance with Rule 13–102(a), be referred by the clerk of the district court to which it has been transferred.

Notes of Advisory Committee on Rules

Subdivision (a). Paragraph (1) of subdivision (a) of this rules revises the usual bases for venue as now prescribed by §§ 2a(1) and 622 of the Act for original petitions under Chapter XIII. In view of § 606(3) and (8) of the Act, only a *former* principal place of business within the preceding 6 months could now serve as the basis for venue for a Chapter XIII petition. But neither a district of a former place of business nor a district of former residence or domicile is an appropriate place for administration of a case based on the current earnings of the debtor. The rule therefore substitutes the district of the debtor's present principal place of employment, or residence, or domicile, as the basis for venue for original petitions. For petitions filed in pending bankruptcy cases, the venue will already have been determined by Bankruptcy Rule 116, and since the bankruptcy case will have been referred to a referee pursuant to Bankruptcy Rule 102(a), Bankruptcy Rule 509(a), made applicable by Rule 13–501, requires the petition to be filed with the referee unless otherwise directed by local rule or order. Although Bankruptcy Rule 116 conforms to § 2a(1) of the Act in prescribing the venue for a petition by an individual, any inconvenience can be met by the transfer provisions of subdivision (b) of this rule.

Paragraph (2) of subdivision (a) deals with venue for the filing of a joint petition by husband and wife as authorized by Rule 13-111(a). In effect, it authorizes the filing of a joint petition in any district which would have been a district of proper venue for the filing of a single petition by either spouse. Again, any inconvenience can be met by the transfer provisions of subdivision (b) of this rule.

Subdivision (b) of the rule incorporates the features of § 32b and c of the Act and clarifies the procedure to be followed in requesting and effecting transfer of a case. While § 32b, which deals with cases filed in the wrong court, authorizes transfer only on the filing of an objection, § 32c, which deals with transfer of cases even though filed in a proper venue, curiously appears to require no objection by a party in interest. Subdivision (b) of the rule authorizes the court to transfer a case on its own initiative as well as on motion, irrespective of whether the venue is proper or improper, but protects the parties against being subjected to a transfer in either event after the first meeting of creditors except on a timely motion of a party in interest. If the transfer would result in fragmentation or duplication of administration, increase expense, or delay closing the estate, such a factor would bear on the timeliness of the motion as well as on the propriety of the transfer under the standards prescribed in subdivision (b). Section 32b, in authorizing a transfer from a wrong court to a proper court, requires the judge to act in the "interest of justice," whereas § 32c authorizes the judge to transfer any case to a court in any other district if the interests of the parties will be best served thereby. Subdivision (b) of the rule requires the interest of justice and the convenience of the parties to be the grounds of any transfer of a case or of the retention of a case filed in a wrong district. *Cf.* 28 U.S.C. §§ 1404(a) (district court may transfer any civil action "[f]or the convenience of parties and witnesses, in the interest of justice") and 1406(a) (district court "shall dismiss, or if it be in the interest of justice, transfer" a case "laying venue in the wrong division or district"). Subdivision (b) of the rule also expressly requires a hearing on notice to the petitioner or petitioners before the transfer of any case may be ordered and before a case filed in the wrong district may be dismissed. This requirement applies when the court acts on its own initiative as well as when it transfers or dismisses a case on motion.

Although it has been said that under § 32 a court cannot dismiss a case though filed in the wrong district, see, *e.g., In re Bankers Trust*, 403 F.2d 16, 22-23 (7th Cir. 1968); *In re Eatherton*, 271 F.2d 199, 204 (8th Cir. 1959), the rule recognizes dismissal as one of the options available to the court in such a case, as it is under the amendment of 1949 to 28 U.S.C. § 1406(a) when the wrong venue is selected for ordinary civil litigation in a federal district court. Transfer or retention would normally be in the interest of justice, however, unless the choice of the wrong venue appears deliberate and "smacks of harassment or evidences some other element of bad faith" on the petitioner's part. 1 Moore, *Federal Practice* 1909 (2d ed. 1961). Insofar as paragraph (2) of subdivision (b) authorizes retention of a case filed in the wrong court if no objection is raised, it follows the interpretation of § 32b of the Act in *In re Martinez*, 241 F.2d 345 (10th Cir. 1957). Insofar as it authorizes retention of a case filed in the wrong court despite objection where no grounds for transfer is established, it follows *In re Miller*, 172 F.Supp. 208 (D.Kan. 1959).

Section 32 b and c of the Act purport to authorize only the judge to transfer a case to another court, but there is no procedure provided in either subdivision for a case that is automatically referred to the referee by the clerk pursuant to § 22a and § 631 of the Act to come to the attention of the judge. Subdivision (b) of the rule vests the authority for determining the issues and entering orders thereunder in the court, which is ordinarily the referee.

Subdivision (c) is derived from § 32a of the Act and General Order 6. The subdivision makes it the responsibility to the court receiving the first petitions that might have been but were not filed in the same court to determine whether transfer of the cases to one court or some other disposition of them would be appropriate. In view of the policy expressed in § 621 of the Act, the subdivision proceeds on the assumptions that if the debtor has filed a Chapter XIII petition the case should proceed as a Chapter XIII case despite the filing of petitions in bankruptcy by or against him, and that if spouses have filed a joint Chapter XIII petition the case should proceed as a Chapter XIII case despite the filing of petitions in bankruptcy by or against either or both of them. Debtors who do not desire this result may apply for dismissal or conversion to bankruptcy pursuant to Rule 13-112 or Rule 13-215, as appropriate. The standards, "interest of justice" and "convenience of the parties," are the same as those that govern transfers under subdivision (b) of the rule and are derived from § 32 a and b of the Act.

Subdivision (d). Section 32 and General Order 6, which are the sources of most of the provisions of subdivisions (b) and (c) of Rule 13-110, are silent as to the procedure to be followed by the court to which a case is transferred. Subdivision (d) of this rule provides for an automatic reference in consonance with the procedure prescribed for handling cases originally filed in the court.

Transfer of adversary proceeding. Transfers of adversary proceedings are governed by Bankruptcy Rule 782, made applicable by Rule 13-701.

Rule 13-111. Joint Proceedings of Husband and Wife.

(a) Joint Petitions.

A husband and wife eligible to file single petitions may file a joint petition pursuant to Rule 13-103 or, if a petition in bankruptcy has been filed by or against either or both of them, in a pending bankruptcy case pursuant to Rule 13-104.

(b) Joint Administration.

If a joint petition is filed pursuant to subdivision (a) of this rule the court shall, or if single petitions by a husband and wife are pending in the same court, the court may order a joint administration of the estates and, while protecting the rights of the parties under the Act, may make such other orders, including the appointment of a single trustee, as may tend to avoid unnecessary costs and delay.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (a) of this rule recognizes the appropriateness of a joint petition by husband and wife where both are eligible to file a Chapter XIII petititon. Since the Chapter XIII Statement (Official Form No. 13-5) requires essentially the same information about the family financial affairs whether one or both spouses have initiated a Chapter XIII case, provision for a joint petition will eliminate duplication of paper work with some possible saving to the debtor. Joint administration may include combining the estates so that a single plan may be confirmed, payments may be made under the plan by only one spouse or the employer of one spouse, and a single docket may be used for the matters occurring in the administration, including the listing of filed claims, the combining of notices to creditors of the different estates, and there may be joint handling of other purely administrative matters that may aid in expediting the cases and rendering the process less costly.

Subdivision (b) of the rule provides that where a joint petition is filed the estates shall be jointly administered and also recognizes that joint administration may be appropriate even though the spouses have filed single petitions. Notwithstanding the potentialtiy of conflict of interests of the creditors of husband and wife, the conflict is not sufficiently serious or frequent in most cases to warrant the selection of separate trustees. The court should, before appointing a single trustee, make a preliminary evaluation of the risks of conflict of interest whether the spouses have filed joint or separate petitions. The authority of the court to order joint administration on separate petitions extended equally to the situation where the petitions are filed under different rules, *i.e.*

where one petition is filed under Rule 13-103 and the other under Rule 13-104.

Subdivision (b) also contains an adaptation of the provisions of Rule 42(a) of the Federal Rules of Civil Procedure. The rule does not deal with filing fees when a joint petition is filed or an order for joint administration of estates is made. *Cf.* Rule 13-106.

Rule 13-112. Dismissal or Conversion to Bankruptcy Without Confirmation of Plan; Evidence of Title.

(a) Voluntary Dismissal or Conversion to Bankruptcy; Dismissal or Conversion for Want of Prosecution, Nonpayment of Filing Fees, or Denial of Confirmation.

On application of the debtor to dismiss the case or to convert it to bankruptcy at any time prior to confirmation, or for want of prosecution or nonpayment of any installment of the filing fees as ordered pursuant to Rule 106 and after hearing on notice to the debtor, or if no plan is confirmed, the court shall—

(1) If the petition was filed pursuant to Rule 13-104, enter an order directing that the bankruptcy case proceed; or

(2) if the petition was filed pursuant to Rule 13-103, enter an order dismissing the case or, with the written consent of the debtor, enter an order adjudicating him a bankrupt.

(b) Distribution of Payments.

If a case is dismissed under this rule without payment in full of the filing fees, any payments made shall be distributed in the same manner and proportions as if the filing fees had been paid in full.

(c) Notice of Dismissal to Creditors.

Promptly after entry of an order of dismissal under this rule, notice thereof shall be given to creditors in the manner provided in Rule 13-203. To enable the court to give such notice, the debtor, if he has not already filed a Chapter XIII Statement, shall file a list of all his creditors with their addresses within the time fixed by the court. If a debtor fails to file such list the court may by order provide for the preparation of the list in such manner as may be appropriate.

(d) Effect of Dismissal.

Unless the order specifies to the contrary, dismissal of a case under this rule is without prejudice. A certified copy of the order of dismissal under this rule shall constitute conclusive evidence of the revesting of the debtor's title to his property.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (a). A debtor who filed a petition in a pending bankruptcy case under Rule 13-104 may at any time before confirmation of a plan voluntarily cause the bankruptcy case to proceed. A debtor who filed an original Chapter XIII petition under Rule 13-103 may in the same circumstances cause the proceeding to be dismissed or, by filing his written consent (which may take the form of a written application to convert to bankruptcy) be adjudicated a bankrupt. Bankruptcy Rule 122 will govern further proceedings in bankruptcy in either event.

Subdivision (a) also governs the disposition of proceedings for want of prosecution, failure to pay filing fees, or when no plan is confirmed. "Want of prosecution" includes failure to file the Chapter XIII Statement, failure to propose a plan, withdrawal or abandonment of a plan, or failure to make any deposit required by the plan, all of which are now specified in § 666 of the Act. The reference in § 666 to the failure to make a deposit required under Chapter XIII is to the deposit required by § 633(2), which is now included in the filing fees required by Rule 13-106. Denial of confirmation may be because the plan is not accepted by creditors, which is now specified in § 666 of the Act, or for any other reason indicated in §§ 651, 652, or 656 of the Act. This rule is not intended to preclude the possibility of confirmation of a revised plan after confirmation of a plan earlier proposed has been denied for any reason. The "application for confirmation" now referred to in § 666 is eliminated under Rule 13-213.

Subdivision (b) is derived from General Order 35(4)(b).

Subdivision (c) is new. The provision for notice of dismissal is to enable creditors to take whatever steps to protect their claims may be appropriate in the light of such information. Rule 13-215(c) imposes a similar requirement for notice to creditors of dismissal after confirmation of a plan.

Subdivision (d) is also new. The first sentence deals with the effect of dismissal as a bar to subsequent discharge of debts listed or filed in the Chapter XIII case. Dismissal of bankruptcy cases for reasons contemplated by this rule, and especially for failure to pay filing fees, has often operated harshly against the bankrupt. See *e.g.*, *In re Frey*, 95 F.Supp. 1007 (S.D.N.Y. 1951); MacLachlan, *Bankruptcy* 100 (1956); Shaeffer, *Proceedings in Bankruptcy in Forma Pauperis*, 69 Col. L. Rev. 1203, 1204, (1969). Typically, he has been held thereafter barred from obtaining a discharge on the debts which could have been discharged in the case that was dismissed, *In re Seiden*, 174 F.2d 586, 587 (2d Cir. 1949); *Perlman v. 322 West Seventy-Second Street Co.*, 127 F.2d 716 (2d Cir. 1942). Although the court has undoubtedly had discretion under Rule 41(b) of the Federal Rules of Civil Procedure to indicate that an involuntary dismissal was without prejudice to future relief under the Act, see Donnelly, *The Non-Dischargeability of Dischargeable Debts in Bankruptcy*, 36 Va.L.Rev. 185, 191 (1950), "the reported cases reveal no instance of a bankrupt escaping the res judicata effect of a dismissal because the dismissing court had so exercised its discretion." Countryman, *Cases and Materials on Debtor and Creditor* 792 (1964). Subdivision (d) leaves discretion in the court to determine in the light of the circumstances whether dismissal should bar future relief under the Act, but when it makes no specific reference one way or the other in the order, a dismissal is without prejudice. Under § 17b of the Act, added by the amendment of 1970, a failure to obtain a discharge in a prior case dismissed without prejudice for failure to pay filing fees or to secure costs does not bar a discharge in a subsequent case.

The second sentence of subdivision (d) supplements the Federal Rules of Evidence, which apply in Chapter VIII cases. See Bankruptcy Rule 917, made applicable by Rule 13-901. Recordation of an order of dismissal would not come within the provisions of § 21h of the Act so as to impart constructive notice, however.

PART II.—PLAN AND PROCEEDINGS RELATED THERETO; NOTICES TO CREDITORS; CREDITORS' MEETINGS; TRUSTEES; EXAMINATIONS; ATTORNEYS AND ACCOUNTANTS

Rule 13-201. Filing of Plan.

(a) Time for Filing Plan; Identification of Plans.

The debtor may file a plan with his petition. If a plan is not filed with the petition it shall be filed within 10 days thereafter and such time shall not be further extended except for cause shown and on such notice to such persons as the court may direct. Each plan filed and any other plans for which acceptances of creditors are solicited must be appropriately identified.

(b) Provision of Copies.

The debtor, if required by the court, shall promptly furnish a sufficient number of copies to enable the court to include a copy of the plan with each notice of the first meeting of creditors pursuant to Rule 13-204(a)(1).

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (*a*) revises provisions now contained in §§ 633(2) and 666 of the Act. A plan must be filed no later than 10 days after the filing of the petition unless the court for cause shown grants an extension of time. Official Form No. 13-6 provides a form of plan. Since Rule 13-202(a) permits the debtor to obtain acceptances of a plan before or after the filing of the petition, subdivision (a) of this rule requires each filed plan and any other plans for which acceptances of creditors are solicited to be appropriately identified.

Subdivision (*b*). Rule 13-204(a)(1) requires the first creditors' meeting to be called promptly after the filing of a plan and specifies that the notice of the meeting shall be accompanied by a copy or summary of the latest filed plan. Subdivision (b) of this rule authorizes the court to require the debtors to provide any necessary copies of the plan.

Rule 13-202. Acceptance or Rejection of Plan.

(a) Time for Acceptance or Rejection; Effect of Failure to Accept or Reject.

At any time prior to the conclusion of the first meeting of creditors each creditor filing a claim may file with the court his acceptance or rejection of the plan or summary thereof which accompanies the notice of first creditors' meeting and, upon failure to do so, any creditor filing a claim shall be deemed to have accepted such plan. For cause shown at any time before the court determines that the plan or any modification thereof has been accepted by the number and amount of creditors required for confirmation, the court may allow any creditor who has filed an acceptance or a rejection to change or withdraw it. An acceptance or rejection may be included in a creditor's proof of claim. Acceptance may be obtained by the debtor before or after the filing of the petition and may be filed by him with the court on behalf of the accepting creditors.

(b) Form of Acceptance or Rejection.

An acceptance or rejection of a plan shall be in writing, shall identify the plan accepted or rejected, and shall be signed by the creditor.

(c) Acceptance or Rejection by Partially Secured Creditor.

A creditor whose claim has been allowed in part as a secured claim and in part as an unsecured claim shall be entitled to accept or reject a plan in both capacities unless his secured claim is not dealt with by the plan, in which event he shall be entitled to accept or reject only as an unsecured creditor.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (*a*). Rule 13-201(a) requires the debtor to file a proposed plan with the filing of the petition or within 10 days thereafter unless the court for cause shown grants an extension of time. The first creditors' meeting is to be called pursuant to Rule 13-204(a)(1) promptly after filing of the plan. Rule 13-204(a)(1) also requires that the notice of such meeting be accompanied by a copy or a summary of the latest filed plan and a proof of claim form containing provisions for acceptance and rejection of the plan and that the notice state that any creditor filing a claim who does not file a written acceptance or rejection of the plan prior to the conclusion of the first creditors' meeting shall be deemed to have accepted the plan. Subdivision (a) of this rule implements those provisions. The provision in subdivision (a) for withdrawal or change of filed acceptances or rejections is not available to a creditor who, by reason of his failure to file either prior to the conclusion of the first meeting, is deemed to have the plan.

The further provision in subdivision (a) authorizing inclusion of an acceptance or rejection in a creditor's proof of claim is optional and is not intended to reduce the time allowed for filing proofs of claim under Rule 13-302(e). But under § 652 of the Act only those unsecured claims proved and allowed before the conclusion of the first creditors' meeting are counted in determining acceptances of the plan and under Rule 13-302(e)(1) secured claims which are not filed by the first date set for the first creditors' meeting or by such reasonable extension of time as the court may grant are not treated as secured claims for purposes of voting on or distribution under the plan. Subdivision (a) also preserves the right now given the debtor by § 633(3) of the Act to obtain acceptances before or after the filing of the petition.

Subdivision (*b*) of this rule preserves the requirement of §§ 633(3), 651 and 652 of the Act that acceptances of a plan must be in writing and applies the same requirement to rejections of a plan. This requirement, which enables the debtor and the creditors to act in advance of the first meeting, does not, of course, apply to those creditors who are deemed to have accepted because they have failed to file either a written acceptance or a written rejection within the time specified in subdivision (a).

Subdivision (*c*). Rule 13-307(d) provides that a claim which is only partially secured is to be allowed in part as a secured claim and in part as an unsecured claim. If the plan deals with his secured claim, subdivision (c) allows the holder of such a claim to vote in both capacities. If the plan does not deal with his secured claim he is, of course, entitled to vote only as an unsecured creditor. In either event, only the amount of his unsecured claim should be counted in determining whether the plan has been accepted by a majority in amount of unsecured claims within the meaning of § 652(1) as of the Act.

Rule 13-203. Notices to Creditors and the United States.

(a) Ten-Day Notices to All Creditors.

Except as provided in subdivision (e) of this rule, the court shall give all creditors, including creditors secured by estates in real property or chattels real, at least 10 days' notice by mail of (1) a meeting of creditors and (2) the hearing on confirmation of a plan.

(b) Other Notices to All Creditors.

The court shall give notice by mail to all creditors, including creditors secured by estates in real property or chattels real, of (1) the dismissal of the case pursuant to Rule 13-112 or 13-215; (2) the time fixed, if any for filing rejections of a modification of a plan pursuant to Rule 13-212; (3) the time fixed, if any, for filing a complaint objecting to the debtor's discharge pursuant to Rule 13-404(b)(1); (4) the order of discharge as provided in Rule 13-404(e); (5) the waiver, denial, or revocation of a discharge as provided in Rule 13-406; and (6) the time allowed for filing a complaint to determine the dischargeability of a debt pursuant to § 17c(2) of the Act as provided in Rule 13-407(a)(2).

(c) Addresses of Notices.

All notices to which a creditor is entitled under these rules shall be addressed to the creditor as he or his duly authorized agent may direct in a request filed with the court or delivered to the trustee; otherwise, to the creditor at the address shown in the Chapter XIII Statement or, if a different address is stated in a proof of claim duly filed, then at the address so stated.

(d) Notices to the United States.

Copies of notices required to be mailed to all creditors under these rules shall be mailed (1) to the district director of internal revenue for the district in which the case is pending and (2) whenever

the Chapter XIII Statement or any other paper filed in the case discloses a debt to the United States other than one for taxes, to the United States attorney for the district in which the case is pending and, if disclosed by the filed papers, to the department, agency or instrumentality of the United States through which the debtor became so indebted.

(e) Notice by Publication.

If the court finds that it is impracticable to give notice to creditors by mail as provided in this rule or that it is desirable to supplement such notice, the court may order publication thereof.

(f) Caption.

The caption of every notice given under this rule shall comply with Rule 13–105.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule collects the provisions for notices specifically applicable to all creditors in Chapter XIII cases, but reference must be made to other rules for the time and certain other requirements respecting the notices listed in subdivision (b). Moreover, Rule 13–204(a)(1) requires that a copy or a summary of the last filed plan and a form for proof of claim providing for acceptance or rejection of the plan accompanying the notice of the first creditors' meetings. That rule requires also that the notice shall state that any secured claim not filed on or before the first date set for the first meeting of the creditors will not normally be treated as a secured claim for purposes of voting and distribution and that any creditor filing a claim who does not file a written acceptance or rejection of the plan prior to the conclusion of that meeting shall be deemed to have accepted the plan. The creditors entitled to notice under these rules include secured creditors, whether secured by realty or personalty.

Although the Chapter XIII plan under § 646 of the Act cannot deal with claims secured by estates in real property or chattels real, in view of the definitions of "claims" and "debts" in § 606 (1) and (4), the debtor's real property is nonetheless subject to the court's exclusive jurisdiction under § 611 and to its authority to stay lien enforcement under § 614. Creditors secured by real estate and chattels reals are subject to the automatic stay of lien enforcement provided by Rule 13–401 which, if not terminated, annulled, modified, or conditioned under that rule, continues until the case is closed, dismissed, or converted to bankruptcy or the property subject to the lien is abandoned or transferred. This rule therefore provides that such creditors will receive not only the notice of automatic stay contained in the notice of the first creditor's meeting (Official Form No. 13–7) but also the other notices to creditors provided for in the rules to keep them apprised of the progress of the case. The grant of general authority to the court to regulate notices in Bankruptcy Rule 907, made applicable by Rule 13–901. supplements but is subject to the specific provisions of this rule and any other rules prescribing the terms of notice.

Subdivision (*a*) essentially restates the requirement of § 58a of the Act that all creditors get 10-day notices by mail of the most significant events in a Chapter XIII case. Since notice by mail is complete upon mailing, the requirement of this subdivision is satisfied if the notices it prescribes are deposited in the mail at least 10 days before the event. See Bankruptcy Rule 906(e), made applicable by Rule 13–901; 3 Collier 494 (1971). The time limits prescribed by subdivision (a) cannot be reduced. *Cf.* Rule 13–901(2).

The provision in § 58a(1) of the Act for notice of examinations of the debtor is omitted as unnecessary. As provided in Rules 13–204(a)(2) and 13–206(b), the examination of the debtor is ordinarily conducted at the first meeting of creditors, notice of which is required by subdivision (a) of this rule. If an examination is conducted at any other time pursuant to Rule 13–206(a), the court may give notice to some or all creditors pursuant to Bankruptcy Rule 907 made applicable by Rule 13–901. Notice to creditors of examinations of the debtor was made discretionary in 1938 in recognition of the fact that such notice is often not feasible. See 3 Collier ¶ 58.01 n. 11, ¶ 58.06 (1964).

If a meeting of creditors is adjourned before its conclusion, no notice of the adjourned date is required to be given to creditors under this rule. Treatment of the adjournment as a continuance of the meeting conforms to established and approved practice under the Act. 3 Collier 11–12 (1964).

Under Rule 13–213, a hearing on notice to the debtor and all creditors must be held prior to confirmation of a plan and objections to confirmation may be filed at any time prior to confirmation.

Subdivision (*c*) recognizes that an agent authorized to receive notices for a creditor may, without a court order, designate how notices to the creditor he represents should be addressed. Such an agent includes an officer of a corporation, an attorney at law, or an attorney in fact if the requisite authority has been given him. It should be noted that Official Form 13–8 does not include an authorization of the holder of a power of attorney to receive notices for the creditor, but neither the form nor this rule carries any implication that such an authorization may not be given in a power of attorney or that a request for notices to be addressed to both the creditor and his duly authorize agent may not be filed or delivered to the trustee.

Subdivision (*d*) is a revision of §§ 58e and 678 of the Act. The premise of the requirement that the district director of internal revenue receive copies of notices that all creditors receive is that every debtor is at least potentially a tax debtor of the United States. Notice to the district director alerts him to the possibility that a tax debtor has initiated a Chapter XIII case and may ultimately receive a discharge. Where other indebtedness to the Federal Government is indicated, the United States district attorney is notified in every case as the person in the best position to see to it that the interests of the government are protected. In addition the provision in the last sentences of §§ 58e and 678 requiring notice by mail to the head of any department, agency, or instrumentality of the United States through whose action the debtor became indebted to the United States is carried into this subdivision of the rule. This rule is not intended to preclude a local rule requiring a state or local tax authority to receive some or all of the notices creditors are entitled to receive under these rules.

Subdivision (*e*) specifies two kinds of situations in which notice by publication may be appropriate: (1) when notice by mail is impracticable; and (2) when notice by mail alone is less than adequate. Notice by mail may be impracticable when, for example, the debtor's records have been destroyed and the names and addresses of his creditors are unavailable. Supplementation of notice by mail is indicated when the debtor's records are incomplete or inaccurate and it is reasonable to believe that publication may reach some of the creditors who would otherwise be missed. Bankrutpcy Rule 908, made applicable by Rule 13–901, applies when the court directs notice by publication under this rule.

Subdivision (*f*). As noted in connection with Rule 13–105, the disclosure requirement in subdivision (f) of this rule follows the practice established in some districts by local rule. Inclusion in notices to creditors of information as to other names used by the debtor or debtors will assist creditors in the preparation of their proofs of claim and in deciding whether to object to confirmation of a plan. The addition of the social security number will facilitate identification of the debtor, particularly by the Internal Revenue Service and other agencies which maintain records by reference to this number.

Disposition of provisions of § 58c of the Act. The provisions of § 58c of the Act, requiring notices to be given by the referee unless otherwise ordered by the judge and authorizing written waivers of any notice required by the Act, have been omitted from the rule as unnecessary. The duty to give notice to the creditors under this rule and under Rules 13–404(b)(1) and 13–406 is imposed on the court. This duty may be delegated to an assistant or an employee in the clerk's office as provided in Bankruptcy Rule 506, made applicable by Rule 13–501. Bankruptcy Rule 907, made applicable by Rule 13–901, authorizes the court to prescribe the manner in which any other notice is to be given under the rules. These rules pose no obstacle to the court's giving notice by mail deposited at the location of a national or regional computer center on the basis of information supplied the center by the court. Waiver of notice may be by conduct as well as in writing, and its effect may be appropriately left to case law. See, *e.g., Connelly v. Hancock, Dorr, Ryan & Shove,* 195 F. 2d 864, 868-869 (2d Cir. 1952); *In re Purrier,* 73 F. Supp. 418, 420 (W.D. Wash. 1947).

Rule 13-204. Meetings of Creditors.

(a) First Meeting.

(1) *Date and Place.* Promptly after the filing of a plan the court shall call a first meeting of creditors, but if there is an application or motion to dismiss or to convert to bankruptcy under Rule 13-112, or an appeal from or a motion to vacate an order entered under that rule, the court may delay fixing a date for such meeting. A copy or a summary of the last filed plan and a form of proof of claim containing provision for acceptance or rejection of the plan shall accompany the notice of the meeting. The notice shall state that any secured claim not filed on or before the first date set for the first meeting of creditors or within such extended time as the court may fix will not be treated as a secured claim for purposes of voting and distribution and that any creditor filing a claim who has not filed a written acceptance or rejection of the plan pursuant to Rule 13-202 prior to the conclusion of the first meeting of creditors shall be deemed to have accepted the plan. The meeting may be held at a regular place for holding court or at any other place within the district more convenient for the parties in interest.

(2) *Agenda.* The bankruptcy judge shall preside over the transaction of all business at the first meeting of creditors, including the examination of the debtor. He shall, when necessary, allow and disallow claims, determine which claims are unsecured and which are secured and to what extent, which claims have voted for and against acceptance of the plan, and may rule on confirmation of the plan pursuant to Rule 13-213 if notice of the hearing on confirmation was included in the notice of the meeting.

(b) Special Meetings.

The court may call a special meeting of creditors on application or on its own initiative.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule revises provisions now contained in §§ 55, 632, and 633 of the Act.

Subdivision (a). Rule 13-201 requires a plan to be filed with the court at least 10 days after the filing of the petition unless the time is extended for cause shown. Paragraph (1) of subdivision (a) of this rule requires that the first creditors' meeting be called promptly thereafter, that a copy or a summary of the latest filed plan and a proof of claim form providing for acceptance or rejection of the plan accompany the notice of meeting, and that the notice of the meeting state that any secured claim not filed on or before the first date set for the first creditors' meeting or within such extended time as the court may fix will not be treated as a secured claim for purposes of voting and distribution and that any creditor filing a claim who does not file a written acceptance or rejection of the plan prior to the conclusion of the first creditors' meeting shall be deemed to have accepted the plan. Under § 652 of the Act only those unsecured creditors whose claims are proved and allowed by that time are to be counted in determining acceptances of the plan, but the plan must be accepted by each secured creditor whose claim is dealt with. Under Rule 13-302(e)(1), however, secured claims which are not filed by the first date set for the first creditors' meeting or by such reasonable extension of time as the court may grant are not treated as secured claims for purposes of voting on or distribution under the plan. The requirement of § 632 of the Act that creditors receive 10 days' notice of the meeting is now embodied in Rule 13-203(a), which deals with notices to creditors generally. The filing of a motion to dismiss or to convert to bankruptcy or a motion to vacate or an appeal from an order entered under Rule 13-112 is likely to cause the court to delay the first meeting, but, as is made clear by the first sentence of this rule, this is a matter properly lying within the discretion of the court. The Judicial Conference designates regular places for holding court under § 37b(1) of the Act. See also Bankruptcy Rule 501(b), made applicable by Rule 13-501.

Paragraph (2) of subdivision (a) adds to the agenda of the meeting as specified in § 633 of the Act the determination of which claims are secured and unsecured as contemplated by Rules 13-302(e)(1) and 13-307(d). The referee may also rule at the first meeting on confirmation of the plan if notice of the hearing on confirmation was included in the notice of the meeting. Official Form No. 13-7, a combined order for and notice of the first meeting, makes provision for such notice of the hearing on confirmation.

Subdivision (b) is derived from § 55d of the Act, but vests discretion in the court as to when or whether a special meeting of creditors shall be called. *Cf.* General Order 25. The rule does not retain the requirement of § 55c that creditors at each meeting take pertinent and necessary steps to promote the best interests of the estate and the enforcement of the Act. The trustee is charged with the duty of taking whatever steps are pertinent and necessary for these purposes. See 2 Collier ¶ 47.02 (1964). While the trustee should give heed to the wishes of creditors, the responsibility for decision rests on him. *Id.* ¶ 47.03. If he defaults in the performance of any specific duty "the court may upon application direct him in his duty or, if he be recalcitrant, remove him for disobedience, or permit a creditor to act in his name." *Reuping Leather Co. v. Ft. Greene Nat. Bank,* 102 F.2d 372, 373 (3d Cir. 1939).

No final meeting. No provision is made for a final meeting of creditors. Creditors receive an opportunity to file a complaint objecting to the discharge of a debtor who has not fully performed under the plan and a hearing thereon pursuant to Rule 13-404(b) which will occur just prior to the closing of the case pursuant to Bankruptcy Rule 514, made applicable by Rule 13-501.

Rule 13-205. Appointment and Qualification of Trustees.

(a) Standing Trustees.

(1) *Appointment.* Whenever in their judgment the number of Chapter XIII cases is sufficient to make such appointment feasible, the referees shall appoint one or more standing trustees to whom all Chapter XIII cases shall be assigned without further order. The referees may terminate the appointment of a standing trustee at anytime.

(2) *Qualification.* Every standing trustee shall, before entering upon the performance of his official duties and within 5 days after his appointment or within such further time as the referees may permit, qualify by filing a blanket bond in favor of the United States, conditioned on the faithful performance of his official duties in all cases. Unless otherwise provided by local rule, the order appointing the standing trustee, the bond, and the order approving the bond, shall be filed with the clerk of the court.

(b) Appointment of Trustee Where No Standing Trustee.

(1) *Appointment.* Where no standing trustee has been appointed, or in any case for cause shown, the court shall appoint a trustee at the time of, or prior

to, confirmation of a plan, and shall immediately notify the trustee of his appointment. The court shall also inform him as to how he may qualify, including the penal sum of his bond, if required, and shall require him forthwith to notify the court of his acceptance or rejection of the office.

(2) *Qualification.* Every trustee appointed under this subdivision (b) shall, before entering upon the performance of his official duties and within 5 days after his appointment, qualify by filing a bond in favor of the United States, conditioned on the faithful performance of his official duties, or by giving such other security as may be approved by the court. The court may authorize a blanket bond in favor of the United States conditioned on the faithful performance of official duties by a trustee in more than one case or by more than one trustee. A trustee for whom a blanket bond has been filed shall qualify by filing his acceptance of his appointment in lieu of the bond. Unless otherwise provided by local rule, a bond given under this subdivision (b) shall be filed with the referee.

(c) Amount of Bond and Sufficiency of Surety.

The referees appointing a standing trustee under subdivision (a) of this rule shall determine the amount of his bond and the sufficiency of his sureties or may authorize the bond to be secured by securities designated in Title 6, U.S.C., § 15, which securities shall be deposited in the custody of a Federal Reserve Bank or branch thereof designated by the referees and shall be subject to the order of the referees. The court shall determine the amount of the bond and the sufficiency of the surety for each bond filed under subdivision (b) of this rule.

(d) Eligibility.

A trustee shall have no interest adverse to the estate and shall be competent to perform the duties of his office. If an individual, he shall have a residence or office in the state in which the court appointing him sits or in any adjacent state, and, if a corporation, it shall be authorized by its charter or by law to act as trustee and have an office in the state in which the court appointing it sits.

(e) Proceeding on Bond.

A proceeding on the bond of a trustee may be brought by any party in interest in the name of the United States for the use of the person injured by the breach of the condition. No proceeding shall be brought on a trustee's bond more than 2 years after his discharge in a particular case.

(f) Evidence of Qualification.

Whenever evidence of the qualification of a standing trustee or any other trustee who has filed a blanket bond is required, the court may certify that he has been designated as a trustee in a particular case. Such a certificate, or a certified copy of the order approving the bond or other security given by any other trustee under this rule, shall constitute conclusive evidence of his appointment and qualification.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (a) of this rule continues the practice of using standing trustees, permitted by General Order 55(2) and recommended for integral commercial areas by the Guideline Procedures for Chapter XIII Administration prescribed by the Judicial Conference of the United States. This subdivision contemplates that standing trustees shall be appointed by the referees designated by the Judicial Conference pursuant to § 37 of the Act to serve the territories in which the standing trustees are to serve. If two or more standing trustees are appointed to serve the same territory, provision for assignment of Chapter XIII cases may be made by local rule.

Subdivision (b). Paragraph (1), providing for appointment of a trustee where there is no standing trustee, is derived from General Order 16 and departs from the present requirement of § 633(4) of the Act that the trustee be appointed after creditors have accepted the plan, in order to provide more flexibility. It may not be necessary to appoint a trustee until a plan is confirmed.

The first sentence of paragraph (2) of the subdivision is based on § 50b of the Act, but recognizes that security other than a bond may be given by a trustee as a mode of qualifying under the rule. The balance of paragraph (2) is new and gives explicit authority for approval by the court of a single bond to cover (1) a person who qualifies as trustee in a number of cases, and (2) a number of trustees each of whom qualifies in a different case. The cases need not be related in any way. Substantial economies can be effected if a single bond covering a number of different cases can be issued and approved at one time. When a blanket bond is filed, the trustee qualifies by filing an acceptance of the office. The sentence requiring the bond generally to be filed with the referee, rather than the clerk of the court as provided in § 50h and as required by paragraph (2) of subdivision (a) for standing trustees who may serve more than one referee, is consonant with the provision in Bankruptcy Rule 509(a) that after reference all papers shall be filed with the referee. A bond filed under this rule should conform substantially to Official Form No. 13-11.

Subdivision (c) vests general authority and responsibility in the court for determining the adequacy of the bond and the sufficiency of the sureties thereon in lieu of the detailed provisions in subdivisions b, c, d, e, f, and g of § 50 of the Act that deal with these matters.

Subdivision (d) is a revision of § 45 of the Act. The requirement of the first sentence that the trustee have no interest adverse to the estate has been established by case law. MacLachlan, *Bankruptcy* § 96 (1956). Although § 45 of the Act has imposed a requirement of competence only in respect to an individual trustee, a corporation is neither to be excused from such a requirement nor to be conclusively presumed to be competent. See MacLachlan, *supra.* The requirement respecting residence or office location for an individual trustee has been relaxed by the rule. The requirement of § 45(1) of the Act that an individual trustee be a resident or have an office in the judicial district within which he is appointed is unnecessarily restrictive in light of the development of metropolitan and suburban areas that cross district and state boundaries. This development does not appear to warrant a comparable relaxation respecting corporate trustees, however. Bankruptcy Rule 505, made applicable by Rule 13-501, contains safeguards against nepotism and undue influence in the appointment of trustees and Bankruptcy Rule 503 incorporates the disqualification, by § 39b(2) of the Act, of a referee to act as trustee in any case.

Subdivision (e) is derived from § 50m of the Act. A proceeding on the bond of a trustee is governed by Part VII of the Bankruptcy Rules, made applicable by Rule 13-701. See also Bankruptcy Rule 925, made applicable by Rule 13-901.

Subdivision (f) is a revision of § 21e of the Act to prescribe the evidentiary effect of a certified copy of an order approving any security given by a trustee under this rule or, when a blanket bond has been authorized, of a certificate that a trustee has been designated in a particular case. This rule supplements the Federal Rules of Evidence, which apply in Chapter XIII cases. See Bankruptcy Rule 917, made applicable by Rule 13-901. A certified copy of the order approving the trustee's bond may be recorded and given the effect of constructive notice of the pendency of the Chapter XIII case as provided in § 21g of the Act. The order of approval should conform substantially to Official Form No. 13-12. A certificate of the designation of a trustee who has filed a blanket bond should conform substantially to Official Form No. 13-13. Copies of certificates of designation are not within § 21g of the Act; in proceedings where blanket bonds are filed a certified copy of the petition may be recorded pursuant to § 21g.

Omitted provisions of § 50 of Act. The requirement of a referee's bond has been abolished, and the numerous references to the referee's bond in § 50 of the Act are no longer necessary. The provision for joint and several bonds in § 50j of the Act has not been retained since joint trustees are not authorized in the rules. The bond of a designated depository is dealt with in Bankruptcy Rule 512, made applicable by Rule 13-501. The provision in § 50k of the Act stating the effect of a failure to file a bond is omitted from the rules as unnecessary.

Rule 13-206. Examination.

(a) Examination on Application.

Upon application of any party in interest, the court may order the examination of any person. The application shall be in writing unless made during a hearing or examination or unless a local rule otherwise provides.

(b) Examination of Debtor at First Meeting.

At the first meeting of creditors, the court shall publicly examine the debtor or cause him to be examined and may permit any party in interest to examine the debtor.

(c) Bankruptcy Judge to Preside.

The bankruptcy judge shall preside at any examination under subdivision (b) of this rule.

(d) Scope of Examination.

The examination under subdivisions (a) and (b) of this rule may relate only to the acts, conduct, or property of the debtor, or to any matter which may affect the administration of the debtor's estate, or to his right to discharge.

(e) Compelling Attendance for Examination and Production of Documentary Evidence.

The attendance of any person for examination and the production of documentary evidence may be compelled in accordance with the provisions of Bankruptcy Rule 916 by the use of a subpoena for a hearing or trial.

(f) Place of Examination of Debtor.

Without issuing a subpoena, the court may for cause shown and on such terms as it may impose order the debtor to be examined under subdivision (a) of this rule at any place it designates, whether within or without the district wherein the case is pending.

(g) Mileage.

A person other than a debtor shall not be required to attend as a witness under this rule unless his lawful mileage and fee for one day's attendance shall be first tendered to him. If a debtor resides over 100 miles from the place of examination when he is required to appear for an examination under subdivision (a) of this rule, he shall be tendered mileage allowed by law to a witness for any distance over 100 miles from his residence at the date of the filing of the first petition commencing a case under the Act, or his residence at the time he is required to appear for examination, whichever is the lesser.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (a) of this rule is an adaptation of the first sentence of § 21a of the Act. No change in the persons who can apply for the examination or who can be examined under this subdivision of the Act is intended. See generally 2 Collier ¶¶ 21.06, 21.08, 21.09 (1964). The second sentence clarifies the manner of making application for an examination. The rule omits the provision in § 21a requiring a person to appear before the judge of any state court for examination. The provision appears to be unnecessary and to have been little used. The possible need for an examination before a nearby state court judge when the witness resides in the district but more than 100 miles from the place of examination is suggested in 2 Collier 332 (1964), but this need does not arise under the rule by virtue of the supersession of the special territorial limitation on holding examinations contained in the provision of § 41a of the Act. See the comments *infra* regarding subdivisions (e) and (g) of the rule.

Subdivisions (b) and (c) are derived from §§ 55b and 633(1) of the Act.

Subdivision (d) combines provisions in §§ 7a(10), 21a and 633(1) of the Act for the purpose of defining the scope of any examination under the rule. The references in § 7a(10) to "the conducting of his [*i.e.*, the debtor's] business, the cause of his bankruptcy, his dealings with his creditors and other persons, and whereabouts of his property" and in § 633(1) to "any matter relevant to the proceeding" as appropriate subjects of inquiry are omitted from the rule because embraced by the broad definition of the scope of examination derived from the merger of other language in § 7a(10) with the definition in § 21a. It has indeed been held that the scope of examination under the latter provision is not less broad than that permitted by the more elaborate definition in § 7a(10). *Freeman v. Seligson*, 405 F.2d 1326, 1333 (D.C. Cir. 1968); *Chereton v. United States*, 286 F.2d 409, 413 (6th Cir.), cert. denied, 366 U.S. 924 (1961); *Ulmer v. United States*, 219 Fed. 641, 644 (6th Cir. 1915); *In re Insull Utility Investments, Inc.*, 27 F. Supp. 887, 890 (S.D.N.Y. 1934). The provisos of § 21a relating to the examination of the debtor's spouse are not included in the rule since (1) no special provisionn negating a spousal testimony in Chapter XIII cases is warranted. Notes accompanying Rules 501 and 505 of the Federal Rules of Evidence), and (2) no special limitation on spousal testimony in Chapter XIII cases is warranted. *Cf.* McCormick, *Evidence*, 179-80 (1954); Hutchins and Slesinger, *Some Observations on the Law of Evidence: Family Relations*, 13 Minn. L. Rev. 675 (1929).

Subdivision (e) clarifies the mode of compelling attendance of a witness or party for examination and for the production of evidence under this rule. The subdivision is substantially declaratory of the practice that has developed under § 21a of the Act. See 2 Collier ¶ 21.20 (1964). The special limitation of the proviso of § 41a of the Act that protects a person other than the debtor from being required to attend as a witness before a referee at a place over 100 miles from his residence even though within the same district is not retained in the rules. The governing limits for such a person are those prescribed by Rule 45(e)(1) of the Federal Rules of Civil Procedure, made application to examinations under this rule by this subdivision (e) and Bankruptcy Rule 916.

Subdivision (f) is derived from the second proviso of § 7a(10) of the Act and is not a limitation on subdivision (e). Any person, including the debtor, served with a subpoena within the range of a subpoena must attend for examination pursuant to subdivision (e). Subdivision (f) applies only to the debtor. There are no territorial limits on the service of an order on the debtor. See, *e.g.*, *In re Totem Lodge v. County Club, Inc.*, 134 F. Supp. 158 (S.D.N.Y. 1955).

Subdivision (g) is a revision of the first proviso of § 7a(10) and the proviso of § 41a of the Act. The lawful mileage and fee for attendance at United States court as a witness are prescribed by 28 U.S.C. § 1821.

Rule 13-207. Employment and Compensation and Reimbursement of Attorneys and Accountants Governed by Bankruptcy Rules.

The employment of attorneys and accountants for the trustee and the authorization of the trustee to act as an attorney or accountant for the estate shall be governed by Bankrupcy Rule 215. The compensation and reimbursement of expenses of such an attorney or accountant for an estate and the compensation and reimbursement of the debtor's attorney shall be governed by Bankruptcy Rule 219.

Notes of Advisory Committee on Rules

Under this rule Bankruptcy Rule 215 will govern the employment of atorneys and accountants for the trustee and the service of the trustee as attorney or accountant for the estate. Bankruptcy Rule 219 will govern the compensation of attorneys and accountants, including the attorney for the debtor.

Rule 13-208. Duty of Trustee to Keep Records, Make Reports, and Furnish Information.

A trustee shall: (1) file a complete inventory of the property of the debtor if and as the court directs; (2) keep a detailed record of all receipts, including the source or other identification of each receipt, and of all disbursements; (3) forthwith file with the court notices of creditors' addresses delivered to the trustee pursuant to Rule 13-203(c); (4) furnish information concerning the estate and its administration when reasonably requested by a party in interest, except as otherwise directed by the court; and (5) file a final report and account containing or incorporating by reference a detailed statement of receipts and disbursements.

Notes of Advisory Committee on Rules

This rule combines provisions from General Order 17 and §§ 47a and 49 of the Act into a catalogue of duties of a trustee in respect to record-keeping, making reports and providing information concerning the estate he is administering. Clause (1) of the rule modifies General Order 17(1) to require the filing of an inventory only if and as the court directs. Clause (3) implements the option given creditors by Rule 13-203(c) to file addresses for receipt of notices with the court or to deliver them to the trustee. Clauses (2), (4) and (5) are derived from clauses (5), (10) and (13) of § 47a of the Act. Since there is no final meeting of creditors in Chapter XIII cases (see Note to Rule 13-204), the reference to such meeting in clause 13 of § 47a is omitted. The reporting requirement of clause (12) of § 47a is omitted as unnecessary for Chapter XIII cases. The duty to report to the court the exemptions to which the debtor is entitled, heretofore prescribed by § 47a(6) of the Act and General Order 17(2), is eliminated in Chapter XIII cases. See Note to Rule 13-403.

The trustee's duty to furnish information is limited to that of responding to reasonable requests and is subject to the court's authority to enter protective orders under Bankruptcy Rule 726, made applicable by Rule 13-701, and Bankruptcy Rule 918, made applicable by Rule 13-901. Thus a party to litigation against the trustee may be required to make the kind of showing specified in Rule 26(b)(3) of the Federal Rules of Civil Procedure in order to obtain discovery of documents and tangible things prepared by or for the trustee in anticipation of litigation or for trial. The trustee may also be entitled to one of the kinds of protective orders set out in Rule 26(c) of the Federal Rules of Civil Procedure or in Bankruptcy Rule 918, made applicable by Rule 13-901. Criminal sanctions are imposed by 18 U.S.C. § 154 for a knowing refusal by a trustee or other bankruptcy officer "to permit a reasonable opportunity for the inspection of the documents and accounts relating to the affairs of estates in his charge by parties in interest when directed by the court to do so." See 2 Collier ¶ 29.13 (1961). The trustee's duty of providing information under this rule may be adequately performed when he makes available to a party in interest the books and records containing the information sought. *In re Berneddy's, Inc.*, 108 F.Supp. 183, 185 (D.Mass, 1952), aff'd sub nom. *Massachusetts v. Widett*, 204 F.2d 512 (1st Cir. 1953). The provision in § 49 of the Act for accessibility of the accounts and papers of the trustee is covered by clause (4) of this rule. See also Bankruptcy Rules 508 and 510, made applicable by Rule 13-501.

The final report and account required by clause (5) of the rule may incorporate earlier-filed interim detailed statements of receipts and disbursements if it contains such a detailed statement for the period following the last interim statement incorporated by reference.

The provisions in General Order 17(3) for a procedure to be followed when a trustee fails to perform his duty to file a report or statement and in General Order 17(4) for reference of all accounts of trustees to the referee for audit are eliminated as unnecessary. See Rule 13-211 in regard to proceeding to remove a trustee and Bankruptcy Rule 514, made applicable by Rule 13-501, in regard to passing on the final account.

Rule 13-209. Compensation or Reimbursement of Trustees.

(a) Application for Compensation or Reimbursement.

A trustee, other than a standing trustee, seeking compensation for services and any trustee seeking reimbursement of necessary expenses from the estate shall file with the court an application setting forth a detailed statement of (1) the services rendered and expenses incurred and (2) the amounts requested An application for compensation shall include a statement by the applicant as to what payments have theretofore been made or promised to him for services rendered or to be rendered in any capacity whatsoever in connection with the case, the source of the compensation so paid or promised, whether any compensation he has previously received has been shared and whether an agreement or understanding exists between the applicant and any other person for the sharing of compensation received or to be received for services rendered in or in connection with the case, and the particulars of any such sharing of compensation or agreement or understanding therefor, except that the details of any agreement by the applicant for the sharing of his compensation as a member or regular associate of a firm of lawyers or accountants shall not be required.

(b) Factors in Allowing Compensation.

The compensation allowable by the court to a standing or other trustee for services rendered in the administration of the debtor's estate shall be reasonable, and in making allowances the court shall give due consideration to the nature, extent, and value of the services rendered as well as to the conservation of the estate and the interests of the creditors. The compensation allowed by the Act to a standing or other trustee shall be in full compensation for the services performed by him as required by the Act and by these rules, but shall not be deemed to cover expenses necessarily incurred in the performance of his duties and allowed upon the settlement of his accounts. Additional compensation may be allowed for legal or other services not required of him by the Act or by these rules, but only if such services were authorized by order of the court before they were rendered.

(c) Restriction on Sharing of Compensation.

Except as herein provided, a standing or other trustee rendering services in a Chapter XIII case or in connection with such a case shall not in any form or guise share or agree to share the compensation paid or allowed him from the estate for such services with any other person, nor shall he share or agree to share in the compensation of any other person rendering services in a case under the Act or in connection with such a case. This rule does not prohibit an attorney or accountant from sharing his compensation as trustee with a member or regular associate of his firm, or from sharing in the compensation received by his firm or by any other member or regular associate thereof. If a person violates this subdivision, the court may deny him compensation, may hold invalid any transaction subject to examination under Rule 13-210 to which he is a party, or may enter such other order as may be appropriate.

NOTES OF ADVISORY COMMITTEE ON RULES

Authority for the allowance and payment of compensation and reimbursement of expenses to trustees out of an estate in Chapter XIII cases is found in §§ 62a(1), 64a(1) and 659 of the Act. This rule prescribes the procedure for making application for compensation of trustees, other than standing trustees and reimbursement of expenses of any trustees, and provides guides for the court in making allowances. The rule is derived from subdivisions c and d of § 62, the first paragraph of § 72 and § 659(3) of the Act, the last sentence of 11 U.S.C. § 76a, and General Order 35(3). Payment of these allowances is governed by Rule 13-309.

Applications for Compensations. The disclosure requirements of § 62d of the Act have been extended by subdivision (a) to cover all payments for services in connection with the case, whether or not made pursuant to previous allowances, and the sources of such payments. Requiring such disclosures will strengthen the court's hand in dealing with the evils of fee-splitting and in discovering arrangements and relationships which may exert an adverse influence on administration of the estate. Consistently with the recognition in subdivision (c) of the propriety of the sharing of professional compensation by the members and regular associates of a firm, an applicant for an allowance of compensation is excused from disclosing the details of the partnership agreement or other arrangement for the distribution of compensation among members and regular associates of a firm of attorneys or accountants. The provisions of the rule regarding the sharing of professional compensation continue the policy of the Act as expressed in the proviso to § 62c but extend it not merely to law partners but to associate members of a law partnership, to associate members and partners of an accounting partnership and to the professional members of an incorporated firm of attorneys or accountants.

Factors in Allowing Compensation. The measure of compensation to trustees is governed by § 659(3) of the Act, by subdivision (b) of this rule, and by Guideline Procedures for Chapter XIII Administration prescribed by the Judicial Conference of the United States.

Subdivision (b) of this rule requires the court when making allowances to distinguish professional legal and accounting services from other kinds of services, including those required of a trustee. A trustee may be authorized pursuant to Bankruptcy Rule 215(e), made applicable by Rule 13-207, to perform professional services for the estate when such an authorization is in the best interest of the estate. The words, "as required by the Act", have been inserted in the second sentence of subdivision (b) of this rule (as they were inserted in § 72 of the Act) as a qualification of the word "services" to make it clear that the limitations on compensation allowable to trustees do not prevent the allowance of compensation for services rendered beyond those required of them by the Act and by these rules. See *Matter of Balsa Wood Co., Inc.*, 46 Am. B.R. (n.s.) 661 (S.D.N.Y. 1940). The last sentence of subdivision (b) makes clear the impropriety of any additional allowance for such services, however, unless they were authorized by the court in advance of their performance. Bankruptcy Rule 215(e) permits such an authorization only if it is in the best interest of the estate.

Sharing of Compensation. The second sentence of subdivision (c) resolves a doubt existing under § 62c of the Act as to whether an attorney or accountant may share compensation allowed him as trustee with a member or regular associate of a professional firm to which he belongs. See *In re Ira Haupt & Co.*, 361 F.2d 164, 167–68 (2d Cir. 1966), and *In re Street Railways Advertising Co.*, 54 F. Supp. 577, 578 (S.D.N.Y. 1940); compare 3A Collier 1639 (1961).

Neither denial of compensation nor invalidation of an arrangement for compensation pursuant to subdivision (c) of this rule is an exclusive sanction for violation of the subdivision. A person may be removed from office or dismissed from his employment for such a violation. 3A Collier, *supra* 1639 n.8. The provision in § 48e of the Act authorizing all compensation to be withheld from any trustee or other person ousted from his position because of unlawful sharing of compensation is omitted from the rule because it only partially covers the grounds for withholding compensation and is unnecessary. See 2 Collier ¶ 48.11 (1962).

Rule 13-210. Examination of Debtor's Transactions With His Attorney.

(a) Disclosure of Compensation Paid or Promised to Attorney for Debtor.

Every attorney for a debtor, whether or not he applies for compensation, shall file with the court on or before the first date set for the first meeting of creditors, or at such other time as the court may direct, a statement setting forth the compensation paid or promised him for the services rendered or to be rendered in connection with the case, the source of the compensation so paid or promised, and whether the attorney has shared or agreed to share such compensation with any other person. The statement shall include the particulars of any such sharing or agreement to share by the attorney, but the details of any agreement for sharing of his compensation with a member or regular associate of his law firm shall not be required.

(b) Payment or Transfer to Attorney in Contemplation of Bankruptcy or Chapter XIII Case.

On motion by any party in interest, or on the court's own initiative, the court may examine any payment of money or any transfer of property by the debtor, made directly or indirectly and in contemplation of the filing of a petition under the Act by or against him, to an attorney for services rendered or to be rendered.

(c) Payment or Transfer to Attorney, or Agreement Therefor, After Case Commenced.

On motion by any party in interest, or on the count's own initiative, the court may examine any payment of money or any transfer of property, or any agreement therefor, by the debtor to an attorney after the filing of the first petition commencing a case under the Act, whether the payment or transfer is made or is to be made directly or indirectly, if the payment, transfer, or agreement therefor is for services in any way related to such case.

(d) Invalidation of Unreasonable Payment, Transfer, or Obligation.

Any payment, transfer, or obligation examined under subdivision (b) or (c) of this rule shall be held valid only to the extent of a reasonable amount as determined by the court. The amount of any excess found to have been paid or transferred under subdivision (b) or (c) may be recovered and returned to the debtor and any obligation found to be excessive under subdivision (c) may be cancelled to the extent of the excess.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (a) of this rule is new and implements the balance of the rule, which is derived from § 60d of the

Act. The rationale for the exercise of the rule-making power in this area is stated in the second paragraph of the Note to Bankruptcy Rule 219. Information required to be disclosed by the attorney for a debtor under subdivision (a) and by the debtor in his Chapter XIII Statement (Item #5 of Official Form No. 13–5) will assist the court in determining whether to proceed under this rule. Section 60d was enacted in recognition of "the temptation of a failing debtor to deal too liberally with his property in employing counsel to protect him in view of financial reversal and probable failure." *In re Wood & Henderson*, 210 U.S. 246, 253 (1908). This rule, like § 60d of the Act, is premised on the need for and appropriateness of judicial scrutiny of arrangements between a debtor and his attorney to protect the debtor against overreaching by an officer of the court who is in a peculiarly advantageous position to impose on his client. 3 Collier 1141, 1153 (1964); MacLachlan, *Bankruptcy* 318 (1956). Bankruptcy Rule 914, made applicable by Rule 13–901, applies to any contested matter arising under this rule.

Recoveries of transfers and payments under both subdivisions (b) and (c) will not constitute a part of the estate in a Chapter XIII case, but will be returned to the debtor. At the same time, recoveries by the debtor under either subdivision, or cancellation of obligations of the debtor under subdivision (c), may enhance the ability of the debtor to perform under the plan. Both subdivisions also provide, therefore, for initiation of a procedure to examine on motion of any party in interest or on the court's own initiative.

Rule 13–211. Removal of Trustee; Substitution of Successor.

(a) Removal for Cause.

On application of any party in interest or on the court's own initiative and after hearing on notice, the court may remove a trustee from a case for cause and appoint a successor.

(b) Substitution of Successor.

When a trustee dies, resigns, is removed, or otherwise ceases to hold office during the pendency of a Chapter XIII case, his successor is automatically substituted as a party in any pending action, proceeding, or matter without abatement.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (*a*) of this rule is derived from § 2a(17) of the Act. Termination of the appointment of a standing trustee is governed by Rule 13–205(a) (1).

Subdivision (*b*) is an elaboration of § 46 of the Act. *Cf.* § 1(22) of the Act. The reference in § 46 to a "joint trustee" is omitted from this rule by virtue of the fact that no more than one trustee at a time is authorized to be appointed under Rule 13–205. Bankruptcy Rule 725, made applicable by Rule 13–701, which governs the substitution of parties in adversary proceedings, is correlated with this rule.

Rule 13–212. Modification of Plan Before Confirmation.

The debtor may file a modification of the plan which accompanies, or a summary of which accompanies, the notice of the first meeting of creditors at any time before the plan is confirmed. The debtor may also submit with the modification written acceptances thereof by creditors. If the court finds that the modification does not materially and adversely affect the interest of any creditor who has not in writing accepted it, the modification shall be deemed accepted by all creditors who have accepted or are deemed to have accepted the plan. Otherwise, the court shall enter an order that the plan as modified shall be deemed to have been accepted by any creditor who accepted or is deemed to have accepted the plan and who fails to file with the court within such reasonable time as shall be fixed in the order a written rejection of the modification. Notice of such order, accompanied by a copy or a summary of the proposed modification, shall be given to creditors in the manner specified in rule 13–203 and to other parties in interest at least 10 days before the time fixed in such order for filing rejections of the modification. The debtor shall, if required by the court, furnish a sufficient number of copies of the modification to enable the court to transmit a copy with each such notice.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule revises the procedure now covered by §§ 653 through 655 of the Act. While the court may, without notice and hearing, determine pursuant to the third sentence of the rule that the modification does not affect the interest of any creditor who has not in writing accepted it, that issue may be litigated at the hearing on confirmation of the plan as modified under Rule 13–213. Official Form No. 13–14 provides a form of order fixing a time for rejecting the proposed modification, combined with a notice thereof.

Rule 13–202(a) authorizes the debtor to obtain acceptances of the plan from his creditors before or after the filing of his petition. Rule 13–201(a) authorizes the debtor to file a plan with the petition and requires that a plan be filed within 10 days of the filing of the petition unless the time is extended by the court. That procedure allows the debtor to submit modified plans to his creditors without employing the practice for modification prescribed in this rule. Rule 13–204(a) (1) requires a copy or a summary of the last filed plan to accompany the notice of the first creditor's meeting. The procedure for modification before confirmation prescribed by this rule is designed for use in proposing modifications after the mailing of the notice of first meeting.

Rule 13–213. Confirmation of Plan; Payment Order; Evidence of Title.

(a) Confirmation of Plan.

After hearing on notice to the debtor and to all creditors in the manner specified in Rule 13–203, which hearing may occur at the first meeting of creditors, the court shall rule on confirmation of the plan unless, for cause shown, the court grants a reasonable extension of time for filing written objections to confirmation and sets a later date for hearing on confirmation. Objections to confirmation of the plan may be filed in writing at any time prior to confirmation. An objection to confirmation on the ground that the debtor has committed any act or failed to perform any duty which would be a bar to the discharge of a bankrupt is governed by Part VII of the Bankruptcy Rules. Any other objection is governed by Bankruptcy Rule 914. If no objection is timely filed the court may find, without taking proof, that the debtor has not committed any act or failed to perform any duty which would be a bar to the discharge of a bankrupt and that the plan has been proposed and its acceptance procured in good faith and not by any means, promises, or acts forbidden by law. An order of confirmation shall substantially comply with Official Form No. 13–15.

(b) Payment Order.

An order of confirmation or a separate payment order shall specify, if not specified in the confirmed plan, the amount of payments to be made under the plan and shall specify either the manner in which such payments are to be made by the debtor or the manner in which such payments are to be obtained from the employer of the debtor. Such order directed to an employer may be enforced or implemented in the manner provided for the enforcement of judgments or, in an appropriate case, by injunction or contempt proceedings.

(c) Evidence of Title.

A certified copy of the plan, and of the order confirming the plan, shall constitute conclusive evidence of the revesting of the debtor's title to his property.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (a) of this rule departs from §§ 633(5), 651 and 652 of the Act and Official Forms No. 61 and No. 62 by eliminating the requirement for a formal application for confirmation where all affected creditors have not accepted the plan and by requiring a hearing prior to confirmation even though all affected creditors have accepted the plan. The issues at such hearing may include all issues relating to confirmation under §§ 651, 652 and 656 and also any issue as to whether a creditor is affected by the plan or by a modification thereof under Rule 13-212.

As stated in subdivision (a), the hearing on confirmation may occur at the first creditors' meeting, but in that event Rule 13-204(a) (2) requires that notice of the hearing be included in notice of the meeting. While the hearing need not be scheduled for the first creditors' meeting and even if so scheduled may be postponed for cause shown as authorized by subdivision (a) of this rule, all creditors filing claims who have not accepted or rejected the plan in writing by the conclusion of the first meeting will be deemed to have accepted the plan as provided by Rule 13-202(a).

Subdivision (b). Unless the order of confirmation or a separate payment order entered under subdivision (b) is directed to the debtor's employer, the debtor is responsible for making payments and the case may be dismissed or converted to bankruptcy pursuant to Rule 13-215 if he fails to do so. Orders directed to employers are enforceable in the manner provided for judgments under Rules 69a and 70 of the Federal Rules of Civil Procedure or by injunction or contempt proceedings. See *In re Sparks*, 306 F. Supp. 676 (N.D.Ala. 1969). *Cf. In re Jackson*, 424 F.2d 1220 (7th Cir.) cert. denied 400 U.S. 911 (1970).

Subdivision (c) is derived from §§ 21h and 70i of the Act and supplements the Federal Rules of Evidence, which apply in Chapter XIII cases. See Bankruptcy Rule 917, made applicable by Rule 13-901. Under § 70i title is revested in the debtor on confirmation or at such later time as may be provided in the plan or confirmation order. Recordation of certified copies of the plan and confirming order will impart constructive notice of revesting of title in the debtor under § 21h.

Rule 13-214. Modification of Plan After Confirmation; Revocation of Confirmation.

(a) Modification of Plan after Confirmation.

At any time during the period of a confirmed plan providing for extension, on application of any party in interest and after hearing on notice to such parties as the court may designate, the court may increase or reduce the amount of any of the installment payments provided for by the plan or extend or shorten the time for such payments, or otherwise modify the confirmation or payment order, where it finds that the circumstances of the debtor so warrant or require, or may alter the amount of the distribution to any creditor provided for by the plan to the extent necessary to take account of any payment to or satisfaction of such creditor outside the plan.

(b) Revocation of Confirmation.

Any party in interest may, at any time within 6 months after a plan has been confirmed, file a complaint pursuant to the Act to revoke the confirmation as procured by fraud. When such a complaint is filed the court shall reopen the case if necessary and conduct a hearing on notice to all parties in interest. The procedure shall be governed by Part VII of the Bankruptcy Rules. If the confirmation is revoked—

(1) The court may dispose of the case pursuant to subdivision (a) of Rule 13-215; or

(2) The court may receive proposals of the debtor to modify the plan. Thereafter, the procedure for modification and for confirmation of a plan as modified shall follow Rules 13-212 and 13-213, except that acceptance of the plan shall not be required by any creditor who has participated in the fraud and such creditor shall not be counted in determining the number and amount of the claims of creditors whose acceptance is required. If a modified plan is not confirmed, the court shall dispose of the case pursuant to subdivision (a) of Rule 13-215.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (a) of this rule is derived from § 646(5) of the Act. It authorizes the court, where the debtors' circumstances make it appropriate, to increase or reduce the amount of payments under the plan, to extend or shorten the time for such payments, or otherwise to modify the manner in which the payments were directed to be made in the order confirming the plan or a separate payment order pursuant to Rule 13-213(b). It also authorizes an alteration of distribution under the plan to take account of payment to or satisfaction of any creditor outside of the plan. The requirement of § 646(5) that the plan provide for authority to modify is eliminated, but subdivision (a) adds a requirement of hearing on notice to such parties as the court may designate.

Subdivision (b) is a revision of the procedure now contained in § 671 of the Act. While subdivision (b)(1) makes no significant change in § 671(1), subdivision (b)(2) gives the same protection to the innocent debtor and innocent creditors where modification is made to correct fraud for which they are not responsible as they have in instances of modification before confirmation under Rules 13-212 and 13-213.

Rule 13-215. Dismissal or Conversion to Bankruptcy After Confirmation of Plan.

(a) Voluntary Dismissal or Conversion to Bankruptcy After Confirmation; Dismissal or Conversion for Default or Upon Revocation of Confirmation or Termination of Plan.

After confirmation, (A) on application of the debtor to dismiss the case or to convert it to bankruptcy, or (B) on application of any party in interest if a debtor defaults in any of the terms of the plan or in the payment of any installment of the filing fees due after confirmation, or if confirmation is revoked for fraud and a modified plan is not confirmed pursuant to Rule 13-214(b) (2), or if the plan terminates by reason of the happening of a condition specified therein, the court shall reopen the case if necessary and—

(1) if the petition was filed pursuant to Rule 13-103 and if confirmation has been revoked for fraud chargeable to the debtor, the court shall enter an order dismissing the case or adjudicating the debtor a bankrupt; or

(2) in any other case in which the petition was filed pursuant to Rule 13-103, the court shall enter an order dismissing the case or, with the written consent of the debtor, shall enter an order adjudicating him a bankrupt; or

(3) in any case in which the petition was filed pursuant to Rule 13–104, the court shall enter an order directing that the bankruptcy case proceed.

(b) Dismissal Without Full Payment of Fees.

If a case is dismissed under this rule without payment in full of the filing fees, any payments made shall be distributed in the same manner and proportions as if the filing fees had been paid in full.

(c) Notice of Dismissal to Creditors.

Promptly after entry of an order of dismissal under this rule, notice thereof shall be given to creditors in the manner provided in Rule 13–203.

(d) Effect of Dismissal.

Unless the order specifies to the contrary, dismissal of a case under this rule on the ground of fraud is with prejudice and dismissal on any other ground is without prejudice. A certified copy of the order of dismissal under this rule shall constitute conclusive evidence of the revesting of the debtor's title to his property.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (a) of this rule is derived from §§ 666 and 671 of the Act. Under this subdivision, a debtor who filed his petition in a pending bankruptcy case may at any time after confirmation of a plan voluntarily cause the bankruptcy case to proceed. A debtor who filed an original Chapter XIII petition may in the same circumstances, unless the confirmation has been revoked for fraud chargeable to him, cause the proceeding to be dismissed or, alternatively, by filing a written consent to adjudication (which may take the form of a written application to convert to bankruptcy), cause it to continue as a bankruptcy case. The latter procedure has been approved under the Act when employed by a debtor in default under a confirmed plan. *In re Hendren*, 240 F. Supp. 807 (S.D. Ohio, 1965), and by a debtor not in default. *Rice* v. *Mimms*, 291 F.2d 823 (10th Cir. 1961). See also *In re Hardy*, 287 F.Supp. 40 (S.D. Ohio, 1967). Paragraph (1) of subdivision (a) recognizes that, if the confirmation has been set aside for fraud chargeable to the debtor in a case originating under Chapter XIII and a modified plan is not confirmed, the court has discretion under § 671 of the Act either to dismiss the proceeding or to adjudicate the debtor a bankrupt without his consent.

Paragraphs (2) and (3) of subdivision (a) governs the disposition of proceedings after confirmation of a plan where the confirmation is set aside for fraud not chargeable to the debtor and a modified plan is not confirmed, where the debtor defaults under the plan or on installment payment of fees, or where the plan terminates on a condition specified therein. If in any of these situations, the debtor had filed his petition in a pending bankruptcy case, the bankruptcy case is to proceed. If the Chapter XIII petition was the original petition, the court is to dismiss the case unless the debtor files a written consent to adjudication. Bankruptcy Rule 122 will govern further proceedings in bankruptcy.

Subdivision (b) is derived from General Order 35 (4)(b).

Subdivision (c), requiring notice of dismissal, is to enable creditors to take whatever steps to protect their claims may be appropriate in the light of such information. Rule 13–112(c) imposes a similar requirement for notice to creditors of dismissal without confirmation of a plan.

Subdivision (d) is new. In many instances of voluntary dismissal, dismissal for failure to pay filing fees; dismissal after confirmation has been set aside for fraud not chargeable to the debtor, and dismissal because the plan terminates by reason of the happening of a condition specified therein, the debtor should not be penalized because of a good faith effort to pay his debts under a plan. The same is true where dismissal is because of a default for which he could not justly be held accountable—if such a default occurred three years after confirmation the debtor might nonetheless be granted a discharge under § 661 of the Act. As indicated in the Note to Rule 13–112, while the court has had discretion under Rule 41b of the Federal Rules of Civil Procedure to indicate that an involuntary dismissal was without prejudice, there is no evidence in the reported cases of such discretion being exercised. In the one reported case arising under Chapter XIII, a prior dismissal for default without indication of no prejudice was held, under the doctrine of res judicata, to require dismissal of a later case in which the same debts were scheduled although all affected creditors had accepted the plan proposed in the later case. *In re Dunn*, 251 F.Supp. 637 (M.D. Ga., 1966). Subdivision (c) leaves discretion in the court to determine in the light of the circumstances whether dismissal should bar future relief under the Act, but when it makes no specific reference one way or the other in the order, unless the dismissal was for fraud, a dismissal is without prejudice. Under § 17b of the Act, added by the amendment of 1970, a failure to obtain a discharge in a prior case dismissed without prejudice for a failure to pay filing fees or to secure costs does not bar a discharge in a subsequent case.

The second sentence of subdivision (d) supplements the Federal Rules of Evidence, which apply in Chapter XIII cases. See Bankruptcy Rule 917, made applicable by Rule 13–901. Recordation of an order of dismissal would not come within the provision of § 21h of the Act so as to impart constructive notice, however.

PART III.—CLAIMS AND DISTRIBUTION TO CREDITORS

Rule 13–301. Proof of Claim.

(a) Form and Content; Who May Execute.

A proof of claim shall consist of a statement in writing setting forth a creditor's claim and setting forth facts showing that such claim is free from any charge forbidden by applicable law. Except as provided in Rules 13–303 and 13–304, a proof of claim shall be executed by the creditor or by his authorized agent. Except as provided in Rule 13–303, a proof of claim shall conform substantially to Official Form No. 13–9.

(b) Evidentiary Effect.

A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim, but any creditor may be required by the court to establish, by affidavit or in such other manner as the court may require before allowance of the claim, that it is free from any charge forbidden by applicable law.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is an adaptation of § 57a of the Act.

Subdivision (a). The requirement that the proof of claim set forth facts showing that the claim is free from any charge forbidden by law revises requirements now contained in § 656(b) of the Act and in General Order 55(4). The term "charge forbidden" is substituted for "usury" in order to take account of the varying terminology of small loan laws, retail installment sales laws, the Uniform Consumer Credit Code and the Federal Consumer Credit Protection Act. In this respect the rule conforms to existing interpretations which apply § 656(b) to "charges" forbidden by small loan laws and industrial loan acts. *Cope v. Aetna Finance Co.*, 412 F.2d 635 (1st Cir. 1969); *In re Bogan*, 281 F. Supp. 242 (W.D. Tenn. 1968). "Applicable law" is substituted for "laws of the place where the debt is contracted" in recognition of the fact that law of a jurisdiction other than the place where the debt is contracted may sometimes be applicable.

Subdivision (b). The Federal Rules of Evidence, made applicable to Chapter XIII cases by Rule 13–901 and Bankruptcy Rule 917, do not prescribe the evidentiary effect to be accorded particular documents. As indicated in the Note accompanying Bankruptcy Rule 917, subdivision (b) of this rule supplements the Federal Rules of Evidence as they apply to Chapter XIII cases. While a proof of claim complying with the rules is prima facie evidence of the validity and amount of the claim, the court may in any case require a creditor, before allowance of the claim, to establish by affidavit or otherwise that his claim is free from any forbidden charge.

Rule 13-302. Filing Proof of Claim.

(a) Manner of Filing.

In order for his claim to be allowed, every creditor, including the United States, any state, or any subdivision thereof, must file a proof of claim in accordance with this rule, except as provided in Rules 13-303, 13-304, and 13-305.

(b) Place of Filing.

A proof of claim shall be filed in the place prescribed by Bankruptcy Rule 509.

(c) Claim Founded on a Writing; Perfection of Security Interests.

When a claim, or an interest in property of the debtor securing the claim, is founded on a writing, the original or a duplicate shall be filed with the proof of claim unless the writing has been lost or destroyed. If lost or destroyed, a statement of the circumstances of the loss or destruction shall be filed with the claim. If a security interest is claimed, the proof of claim shall be accompanied by satisfactory evidence that the security interest has been perfected.

(d) Transferred Claim.

(1) *Unconditional Transfer Before Proof Filed.* If a claim has been unconditionally transferred before proof of the claim has been filed, the proof of such claim may be filed only by the transferee. If such claim has been transferred after the filing of the first petition commencing a case under the Act, it shall be supported by (A) a statement of the transferor acknowledging the transfer and stating the consideration therefor or (B) a statement of the transferee why it is impossible to obtain such a statement from the transferor.

(2) *Unconditional Transfer After Proof Filed.* If a claim has been unconditionally transferred after proof thereof has been filed, proof of the terms of the transfer shall be filed, and the court shall immediately notify the original claimant by mail of the filing of such proof of transfer and that objection thereto, if any, must be made within 10 days of the mailing of the notice or within such further time as the court may allow. If the court finds, after hearing if necessary, that the claim has been unconditionally transferred, it shall make an order substituting the transferee for the original claimant. If it does not so find, the court shall make such order as may be appropriate.

(3) *Transfer of Claim for Security Before Proof Filed.* If a claim has been transferred for security before proof of the claim has been filed, the transferor or transferee or both may file a proof of claim for the full amount. The proof shall be supported by a statement setting forth the terms of the transfer and, if the claim was so transferred after the filing of the first petition commencing a case under the Act, by (A) a statement of the transferor acknowledging the transfer and stating the consideration therefor, or (B) a statement of the transferee why it is impossible to obtain such a statement from the transferor. If either the transferor or the transferee files a proof of claim, the court shall immediately notify the other by mail that he may join in the claim so filed. If both transferor and transferee file proofs of the same claim, the proofs shall be consolidated. After hearing if necessary, the court shall make such orders respecting allowance and voting of the claim, payment of dividends thereon, and participation in the plan and in the administration of the estate as may be appropriate.

(4) *Transfer of Claim for Security After Proof Filed.* If a claim has been transferred for security after proof thereof has been filed, proof of the terms of the transfer shall be filed, and the court shall immediately notify the original claimant by mail of the filing of such proof of transfer and that objection thereto, if any, must be made within 10 days of the mailing of the notice or within such further time as the court may allow. After hearing if necessary, the court shall make such orders respecting allowance and voting of the claim, payment of dividends thereon, and participation in the plan and in the administration of the estate as may be appropriate.

(e) Time for Filing.

(1) *Secured Claims.* A secured claim, whether or not listed in the Chapter XIII Statement, must be filed on or before the first date set for the first meeting of creditors in the Chapter XIII case unless the court, on application before the expiration of that time and for cause shown, shall grant a reasonable, fixed extension of time. Any claim not properly filed by the creditor within such time shall not be treated as a secured claim for purposes of voting and distribution in Chapter XIII case.

(2) *Unsecured Claims.* Unsecured claims, whether or not listed in the Chapter XIII Statement, must be filed within 6 months after the first date set for the first meeting of creditors in the Chapter XIII case, except as follows:

(A) On application before the expiration of such period and for cause shown, the court may grant a reasonable, fixed extension of time for the filing of a claim by the United States, a state, or a subdivision thereof.

(B) In the interest of justice the court may grant an infant or incompetent person without a guardian up to an additional 6 months for filing a claim.

(C) A claim which arises in favor of a person or becomes allowable because of a judgment for the recovery of money or propety from such person or because of a judgment denying or avoiding a person's interest in property may be filed within 30 days after such judgment becomes final, but if the judgment imposes a liability which is not satisfied, or a duty which is not performed, within such period or such further time as the court may permit, the claim shall not be allowed.

(f) Claims Filed in Superseded Bankruptcy Case.

Where the petition is filed pursuant to Rule 13-104, all claims filed in the superseded bankruptcy case shall be deemed filed in the Chapter XIII case if amended, within the time specified in subdivision (e)

(1) of this rule for secured claims, or within the time specified in subdivision (e)(2) of this rule for other claims, as appropriate, to conform to paragraph 4 of Official Form No. 13–9 or No. 13–10, as appropriate.

Notes of Advisory Committee on Rules

Subdivision (*a*) of this rule is substantially a restatement of the general requirement that claims be proved and filed as set out in § 57n of the Act, which has been held applicable to Chapter XIII proceedings. *Fausett v. Murner*, 402 F.2d 961 (5th Cir. 1968); *In re Willett*, 265 F.Supp. 999 (S.D. Calif. 1967); *In re Maye*, 180 F. Supp. 43 (E.D. Va. 1958); *In re Heger*, 180 F. Supp. 147 (D. Minn. 1959). The exceptions refer to a new rule authorizing certain claims to be filed by the debtor or trustee, to a revised provision for the filing of claims by a codebtor, and to another new rule governing post-petition claims.

Subdivision (*b*) and Bankruptcy Rule 509, to which the subdivision refers, are adapted from § 57c of the Act.

Subdivision (*c*). The first two sentences of subdivision (c) are derived from § 57b of the Act and the fifth sentence of General Order 21(1), but add a requirement for the filing of any written security agreement and provide that the filing of a duplicate of a writing underlying a claim authenticates the claim with the same effect as the filing of the original writing. *Cf.* Rules 1001 (4) and 1003 of the Federal Rules of Evidence. The statutory requirement of an oath is dispensed with in accordance with the policy of the rules to simplify procedures and reduce costs. *Cf.* Bankruptcy Rule 911(b) and Rule 11 of the Federal Rules of Civil Procedure. The provision of § 57b of the Act allowing withdrawal of an instrument on permission of the court is deleted as unnecessary in view of the authorization given by the rule for the filing of a duplicate in lieu of the original. The last sentence of subdivision (c) is new and, with the requirement in the first sentence for the filing of any written security agreement, is designed to facilitate the determination whether the claim is secured and has been properly perfected so as to be valid against the Chapter XIII trustee. See *City National Bank & Trust Co. v. Oliver*, 230 F.2d 686 (10th Cir. 1956). "Satisfactory evidence" of perfection, which is to accompany the proof of claim, would include a duplicate of an instrument filed or recorded together with an indication of the date or dates when and the office or offices where filed or recorded, a duplicate of a certificate of title when a security interest is perfected by notation on such a certificate, a statement that pledged property has been in the possession of the secured party since a specified date, or a statement of the reasons why no action was necessary for perfection.

Subdivision (*d*) is an elaboration of General Order 21(3). The rule recognizes the differences between an unconditional transfer of a claim and a transfer for the purpose of security and prescribes a procedure for dealing with the rights of the transferor and the transfeee when the transfer is for security. The rule clarifies the procedure to be followed when a transfer precedes the filing of the petition as well as that required when the transfer occurs afterward. When a claim is assigned after the petition is filed but before a proof of claim is filed, General Order 21(3) has required the proof to be accompanied by an affidavit of the assignor who owned the claim at the time the petition was filed. The affidavit duplicates in considerable part the information required to be included in the proof of claim. The interests of sound administration are adequately served by requiring the post-petition transferee to file with his proof of claim a statement of the transferor acknowledging the transfer and the consideration for the transfer. Such a disclosure will assist the court in dealing with evils that may arise out of post-petition traffic in claims. *Monroe v. Scofield*, 135 F.2d 725 (10th Cir. 1943). *In re Philadelphia & Western Ry.*, 64. F. Supp. 738 (E.D. Pa. 1946); *cf. In re Latham Lithographic Corp.*, 107 F.2d 749 (2d Cir. 1939). Both paragraphs (1) and (3) of this subdivision, which deal with a transfer before the filing of a proof of claim, recognize that it may be impossible to obtain the required statement from the transferor, but in that event a statement of the reason for the impossibility must accompany the proof of claim filed by the transferee.

Paragraphs (3) and (4), which are new, clarify the doubtful status of a claim transferred for the purpose of security. An asignee for security has been recognized as a rightful claimant. *Feder v. John Engelhorn & Sons*, 202 F.2d 411 (2d Cir. 1953). An assignor's right to file a claim notwithstanding the assignment was sustained in *In re R & L Engineering Co.*, 182 F.Supp. 317 (S.D. Calif. 1960). Apparently neither the assignor nor the assignee was accorded the right to file a claim assigned for security in *In re Eagles*, 99 Fed. 695 (E.D.N.C. 1900), but the facts of the case are obscure. Facilitation of the filing of proof by both claimants as holders of interests in a single claim is constant with equitable treatment of the parties and sound administration. See *In re Latham Lithographic Corp.*, 107 F.2d 749 (2d Cir. 1939).

Paragraphs (2) and (4) of subdivision (d) deal with the transfer of a claim after proof thereof has been filed and are an adaptation of the second sentence of General Order 21(3). The proof of the terms of the transfer required to be disclosed to the court will facilitate the court's determination of the appropriate order to be entered on account of the transfer. The requirement of General Order 21(5) that assignments of claims after proof has been filed be "proved or acknowledged" before an officer enumerated in § 20 of the Act has been deleted as needless.

Subdivision (*e*). Paragraph (1) of subdivision (e) requires generally that secured claims be filed on or before the the first date set for the first creditors' meeting in the Chapter XIII case. Since the plan must be submitted to and accepted by creditors before it can be confirmed, an early determination of secured claims is essential to confirmation and the beginning of distribution to creditors under the plan. If for cause shown a secured creditor is unable to file by the time specified, the court may grant a reasonable, fixed extension of time. Any secured creditor who does not file his claim within the time specified, or as extended, will be treated thereafter as an unsecured creditor for purposes of voting and distribution in the Chapter XIII case. But failure to file a secured claim within the time fixed by this rule would not prejudice the creditor's status as a secured creditor in the event the case was later converted to bankruptcy. Paragraph (1) does not apply to creditors secured by estates in real property or chattels real who, under §§ 606 (1) and (4) and 646(2) of the Act, cannot be dealt with in the Chapter XIII plan.

Paragraph (2) of subdivision (e) is adapted from § 57n of the Act and retains the time limits on the filing of claims established by the statuory provisions. Alhough the claim of a creditor secured by real property may have arisen before the petition was filed, a judgment avoiding his security interest in realty may make his claim allowable for the first time after the time for filing claims generally has expired. In according the creditor in such a case a right to file his claim 30 days after the judgment against him becomes final, clause (C) of paragraph (2) clarifies the applicability of this exception from the 6-month limitation to a situation entirely within the ambient of the purpose of the third proviso of § 57n, from which the clause is derived. A judgment does not become final for the purpose of starting the 30-day period provided for by clause (C) until the time for appeal has expired or, if an appeal is taken, until the case has been disposed of. *In re Tapp*, 61 F.Supp. 594 (W.D.Ky. 1945). The last sentence of § 57n, providing for late filing of claims to permit payment of dividends thereon from any surplus remaining in the estate, has been omitted as inconsistent with the rehabilitative purpose of Chapter XIII. Under Rule 13–309(c) any surplus is to be returned to the debtor.

Subdivision (*e*) rejects the theory of *Fausett v. Murner*, 402 F.2d 951 (5th Cir. 1968), that if a claim is listed by the debtor the creditor can file nothing until the time for filing claims has expired and can thereafter file an "amended claim."

Subdivision (*f*) will apply only where the Chapter XIII petition is filed in a pending bankruptcy case under Rule 13–104. Claims filed in the bankruptcy case will be deemed filed in the Chapter XIII case if, within the time limits fixed in paragraph (1) or (2) of subdivision (e), as appropriate, they are amended to make the disclosure as to included charges required by paragraph 4 of Official Form No. 13–9 or No. 13–10, as appropriate. Of course, a creditor may also employ paragraph 12 of Form No. 13-9 to indicate his acceptance or rejection of the proposed plan.

Rule 13-303. Filing of Claims by Debtor or Trustee.

If a creditor fails to file his claim on or before the first date set for the first meeting of creditors in the Chapter XIII case, the debtor or the trustee may execute and file a proof of such claim on Official Form No. 13-10 in the name of the creditor. Such claim shall be treated as a filed claim only for purposes of allowance and distribution. The court shall forthwith mail notice of such filing to the creditor and to the debtor if the claim is filed by the trustee, or to the trustee if the claim is filed by the debtor. The creditor may nonetheless file a proof of claim pursuant to Rule 13-302, which proof when filed shall supersede the proof filed by the debtor or trustee.

NOTES OF ADVISORY COMMITTEE ON RULES

It is the policy of the Act that debtors' estates should be administered for the benefit of creditors without respect to the dischargeability of their claims. Debtors who qualify for discharge under § 660 or § 661 of the Act, however, may find themselves saddled with liabilities which remain unpaid because of the failure of creditors holding claims which may later be established as nondischargeable either to accept the plan or to file proof of claim and receive distributions thereon under the plan. The result is that the debtor is deprived of an important benefit of the Act without any fault or emission on his part and without any objective of Chapter XIII being served thereby.

This rule authorizes the debtor or the trustee to file a proof of claim for any holder of a claim. That authority is conditioned on the creditor's failure to file his own proof of claim on or before the first date set for the first meeting of creditors in the Chapter XIII case, which is the date unsecured claims must ordinarily be filed in order for such claims to be voted on the plan. Unless a creditor claiming security who fails to file his proof of claim by that time has obtained an extension of time to file under Rule 13-302(e) (1), the claim will be provable only as an unsecured claim.

Notice to the creditor is provided to enable him to file his own proof of claim which will supersede the one earlier filed. Notice to the debtor is provided where the trustee files the claim because of the debtor's obvious interest in the matter as recognized in Rule 13-307(a). See also Rule 13-402(4). Notice to the trustee where the debtor files the claim is in recognition of the trustee's duty under Rule 13-307(a) and to alert him to the special character of the proof and the possible need for supplementary evidence of the validity and the amount of the claim. If the trustee is not appointed until after a proof of claim is filed by the debtor pursuant to this rule, he should be notified as soon as practicable thereafter.

This rule is not intended to subject the creditor in whose name a claim is filed thereunder to the jurisdiction of the court. Nor does it authorize the debtor or the trustee to cast such creditor's vote on the plan and claims proved by the debtor or the trustee should not be counted in determining the number and amount of claims of creditors whose acceptance is required for confirmation. To the extent that the claim is allowed and dividends paid on it under the plan, it will be reduced or perhaps paid in full. To the extent of any unpaid balance, if the creditor has not himself accepted the plan and his claim is nondischargeable, he will be unaffected by any discharge granted in the Chapter XIII case. If the claim is also filed pursuant to Rule 13-304 only one distribution on it may be made. As required expressly by Rule 13-304 and by the purpose of this rule, such distribution must diminish the claim.

Rule 13-304. Claim by Codebtor.

A person who is or may be liable with the debtor, or who has secured a creditor of the debtor, may, if the creditor fails to file his claim on or before the first date set for the first meeting of creditors, file a proof of claim pursuant to Rule 13-302, including an acceptance or rejection of the plan or any modification thereof, in the name of the creditor, if known, or if unknown, in his own name. No distribution shall be made on the claim except on satisfactory proof that the original debt will be diminished by the amount of the distribution. The creditor may nonetheless file a proof of claim pursuant to Rule 13-302 and, at any time before the court determines that the plan or any modification thereof has been accepted by the number and amount of creditors required for confirmation, an acceptance or rejection of the plan or any modification thereof. Such proof of claim and such acceptance or rejection shall supersede the proof of claim and the acceptance or rejection filed shall supersede the proof of claim and the acceptance or rejection filed pursuant to the first sentence of this rule. In the event the creditor files a claim and does not file a timely acceptance or rejection of the plan, any acceptance or rejection filed by the codebtor shall be deemed made on the creditor's behalf.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is derived from § 571 of the Act and General Order 21(4). The Act, however, authorizes a filing procedure only by a person who has secured a creditor of the debtor by his "individual undertaking." The rule goes further by authorizing the same procedure to be followed when the person has secured a creditor of the debtor by pledging collateral or otherwise creating a security interest in his own property, without assuming any personal obligation to the creditor. The rule also makes clear that anyone who may be liable on a debt of the debtor, including a surety, guarantor, indorser, or other codebtor is authorized to file in the name of the creditor. See 3 Collier ¶ 57.21 (1964); Countryman, *Cases and Materials on Debtor and Creditor* 686–689 (1964). The rule assures a fair opportunity to the codebtor to exercise the right of filing in the name of the creditor (or in his own name if that of the creditor is unknown) by recognizing that he should not be required to wait until the last minute before the expiration of the period allowed for the filing of claims. Since filing his claim on or before the first date set for the first meeting of creditors is ordinarily necessary in order for the creditor to vote on the plan, conditioning the right to file under this rule on the creditor's nonfiling on or before that date is a reasonable accommodation of the interests of the parties and administrative convenience. Since, moreover, Rule 13-302(e) (1) provides that any secured claim not filed on or before the first date set for the first creditors' meeting will not be treated as a secured claim for purposes of voting and distribution in the Chapter XIII case, permitting the codebtor to file on the creditor's default on that date enables him to preserve his interest in the security.

Rule 13-305. Post-Petition Claims.

Notwithstanding Rule 13-302(e), the court may at any time while a case is pending permit the filing of a proof of claim for the following:

(1) Claims for taxes owing to the United States, or to any state, or any subdivision thereof, at the time of the filing of the petition under Rule 13-103 or 13-104 which had not been assessed prior to the date of confirmation of the plan, but which are assessed within one year after the date of the filing of such petition.

(2) Claims for taxes owing to the United States, or to any state, or any subdivision thereof, after the filing of the petition under Rule 13-103 or 13-

104 and which are assessed while the case is pending; and

(3) On such terms as the court may prescribe, claims incurred by the debtor after the filing of a petition under Rule 13-103 or 13-104 for property or services needed to assure proper performance under the plan by the debtor, provided that, when feasible, prior court approval of the incurring of the claim has been obtained.

NOTES OF ADVISORY COMMITTEE ON RULES

Subparagraphs (a) and (b) of this rule are based on § 680 of the Act. See *In re Gates*, 256 F.Supp. 1 (E.D.Wis. 1966). Express inclusion in these subparagraphs of taxes owing to a subdivision of a state incorporates the interpretation placed upon the comparable provision in § 271 of the Act which, like § 680, refers to taxes owing to the United States "or any State." *Berryhill v. Gerstel*, 196 F.2d 304 (5th Cir. 1952); *Senfour Investment Co. v. King County*, 66 Wash. 2d 644, 404 P.2d 760 (1965), appeal dismissed and cert. denied, 335 U.S. 1 (1966).

Subparagraph (c) outlines a procedure now followed in some districts to enable the debtor to obtain on credit property or services needed to assure performance under the plan, when he cannot obtain them on credit unless the claims therefor are brought under the plan. Such claims serve the interests of both the debtor and the prepetition creditors in much the same way as does credit extended to a debtor in possession or to a debtor operating under a confirmed plan of arrangement by way of extension under Chapter XI. Normally, such credit is to be obtained only with prior approval of the court, but it is recognized that this will not in all instances be feasible, particularly for emergency medical services.

Rule 13-306. Withdrawal of Claim.

A creditor may withdraw a claim as of right by filing a notice of withdrawal, except as provided in this rule. If, after a creditor has filed a claim, an objection is filed thereto or a complaint is filed against him in an adversary proceeding, or the court has directed him to establish that the claim is free from any charge forbidden by law, or the creditor has accepted the plan or otherwise has participated significantly in the case or has received a dividend, he may not withdraw the claim save on application or motion with notice to the debtor and trustee, and on order of the court containing such terms and conditions as the court deems proper.

NOTES OF ADVISORY COMMITTEE ON RULES

Since 1938 it has generally been held that Rule 41 of the Federal Rules of Civil Procedure governs the withdrawal of a proof of claim. *In re Empire Coal Sales Corp.*, 45 F.Supp. 974, 976 (S.D.N.Y.), aff'd sub nom. *Kleid v. Ruthbell Coal Co.*, 131 F.2d 372, 373 (2d Cir. 1942); *Kelso v. Maclaren*, 122 F.2d 867, 870 (8th Cir. 1941); *In re Hills*, 35 F.Supp. 532, 533 (W.D.Wash. 1940). Accordingly it was ruled in the cited cases that a proof of claim may be withdrawn only subject to approval by the court after an objection has been filed. This constitutes a restriction of the right of withdrawal as recognized by some though by no means all of the cases antedating the promulgation of the Federal Rules of Civil Procedure. See Collier 3 ¶ 5712 (1961); Note, 20 B.U.L. Rev. 121 (1940).

The filing of a claim does not commence an adversary proceeding under these rules, but the filing of an objection to the claim initiates a contest that must be disposed of by the court. This rule recognizes the applicability of the considerations underlying Rule 41(a) of the Federal Rules of Civil Procedure to the withdrawal of a claim after it has been put in issue by an objection. Rule 41(a)(2) of the Federal Rules of Civil Procedure provides for a bar to dismissal over the objection of a defendant who has pleaded a counterclaim prior to the service of the plaintiff's motion to dismiss. Although the applicability of this provision to the withdrawal of a claim was assumed in *Conway v. Union Bank of Switzerland*, 204 F.2d 603, 608 (2d Cir. 1953), *Kleid v. Ruthball Coal Co., supra, Kelso v. Maclaren, supra*, and *In re Hills, supra*, this rule vests discretion in the court to grant, deny, or condition the request of a creditor to withdraw, without regard to whether the trustee has filed a merely defensive objection or a complaint seeking an affirmative recovery of money or property from the creditor. The rule also follows *In re Bogan*, 281 F.Supp. 242 (W.D.Tenn. 1968), by imposing similar limitations on the creditor's right to withdraw after the court has, pursuant to Rule 13-301 (b), directed him to establish that the claim is free from any charge forbidden by law.

A number of pre-1938 cases sustained denial of a creditor's request to withdraw his proof of claim on the ground that he had estopped himself or made an election of remedies, 2 Remington, *Bankruptcy* 186 (Henderson ed. 1956); *cf.* 3 Collier ¶ 57.12 at 201 (1964). Voting his claim in an election of a trustee in a bankruptcy case was an important factor in the denial of a request to withdraw in *Standard Varnish Works v. Haydock*, 143 Fed. 318, 319–20 (6th Cir. 1906), and *In re Cann*, 47 F.2d 661, 662 (W.D. Pa. 1931), and accepting the plan in a Chapter XIII case would appear to be of similar significance. It has frequently been recognized also that a creditor should not be allowed to withdraw his claim once he has accepted a dividend. *In re Friedman*, 1 Am. B.R. 510, 512 (Ref., S.D.N.Y. 1899); 3 Collier 205 (1964); *cf. In re O'Gara Coal Co.*, 12 F.2d 426, 429 (7th Cir.) cert. denied, 271 U.S. 683 (1926). It was held in *Industrial Credit Co. v. Hazen*, 222 F.2d 225 (8th Cir. 1955), however, that although a claimant has participated in the first meeting of creditors and in the examination of witnesses, he was entitled under Rule 41(a)(1) of the Federal Rules of Civil Procedure to withdraw his claim as of right when he filed a notice of withdrawal before the trustee filed an objection under § 57g of the Act. While this rule incorporates the post-1938 case law referred to in the first paragraph of this note, it rejects the inference drawn in the *Hazen* case that Rule 41(a) of the Federal Rules of Civil Procedure supersedes the pre-1938 case law that vests discretion in the court to deny or restrict withdrawal of a claim by a creditor on the ground of estoppel or election or remedies. While purely formal or technical participation in a case by a creditor who has filed a claim should not deprive him of a right to withdraw his claim, a creditor who has accepted a dividend or who accepted the plan or otherwise participated actively in a case should be permitted to withdraw only with the approval of the court on terms deemed appropriate by it after notice to the debtor and the trustee. 3 Collier 205–06 (1964).

Rule 13-307. Objections to and Allowance of Claims; Valuation of Security.

(a) Trustee's and Debtor's duty to Examine and Object to Claims.

The trustee and the debtor shall examine proofs of claim and the trustee shall object to the allowance of improper claims, unless no purpose would be served thereby.

(b) Allowance When No Objection Made.

Subject to the provisions of subdivision (d) of this rule, a claim filed in accordance with Rule 13-302, 13-303, or 13-304 shall be deemed allowed unless objection is made by a party in interest or unless the court directs the creditor to establish that the claim is free from any forbidden charge pursuant to Rule 13-301(b).

(c) Objection to Allowance.

An objection to the allowance of a claim shall be in writing. A copy of the objection and notice of a hearing thereon shall be mailed or delivered to the claimant, the trustee, and the debtor. If an objection to a claim is joined with a demand for relief of the kind specified in Rule 13-701, the proceeding thereby becomes an adversary proceeding.

(d) Secured Claims.

If a secured creditor files a claim, the value of the security interest held by him as collateral for his claim shall be determined by the court. The claim shall be allowed as a secured claim to the extent of the value so determined and as an unsecured claim to the extent it is enforceable for any excess of the claim over such value. For the purposes of this subdivision the court may appoint an appraiser in the manner specified by and subject to the limitations of Bankruptcy Rule 606.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivision (a) is derived from § 47a(8) of the Act. The last clause recognizes that the trustee and the court should not be burdened by the making and consideration of objections to claims when the disposition of the objection can have no consequence in the administration of the estate.

Subdivision (b) relieves the court of the substantial burden of making formal orders of allowance of claims to which no objection is made unless the court finds further proof necessary to establish that the claim is free from any forbidden charge. The automatic allowance effected by the rule is only for the purpose of distribution and does not constitute a determination as to the amount or validity of the claim for any other purpose.

Subdivision (c) prescribes the manner in which an objection to a claim shall be made and notice of the hearing thereon given to the claimant, the trustee, and the debtor. The contested matter initiated by such an objection to a claim is governed by Bankruptcy Rule 914, made applicable by Rule 13-901, unless a counterclaim is joined with the objection to the claim. The filing of a counterclaim ordinarily commences an adversary proceeding subject to Part VII of the Bankruptcy Rules, made applicable by Rule 13-701. While the debtor and other creditors may make objections to the allowance of a claim, the demands of orderly and expeditious administration have led to recognition that the right to object is generally centered in the trustee as provided in subdivision (a). 3 Collier ¶ 57.17[2.2] (1961). Section 57f of the Act, requiring objections to claims to be heard and determined as soon as the convenience of court and the best interests of the estates and claimants will permit, is omitted since these considerations govern all proceedings and matters under the Act. See Bankruptcy Rule 903.

By virtue of the automatic allowance a dividend may be paid on a claim which may thereafter be disallowed on objection made pursuant to subdivision (c). The amount of the dividend paid before disallowance in such event would be recoverable by the trustee in an adversary proceeding brought pursuant to § 57*l* of the Act.

Subdivision (d) is an adaptation of § 57h of the Act to take account of the fact that secured as well as unsecured claims are proved and allowed in Chapter XIII cases. Valuation of security and the allowance of any excess of the claim over the security as an unsecured claim has been approved in Chapter XI cases, which deal only with unsecured claims. *United States v. National Furniture Co.*, 348 F.2d 390 (8th Cir. 1965); *Wm. H. Wise & Co. v. Rand McNally & Co.*, 195 F. Supp. 621 (S.D.N.Y. 1961). *Cf. In re Worley*, CCH Bankr. L. Rep. ¶ 64, 283 (E.D. Mich.), affirmed sub nom. *Worley* v. *Budget Credit, Inc., Id.*, ¶ 64, 285 (6th Cir. 1971), cert. denied, 406 U.S. 407 (1972). The provision in the second sentence of the subdivision for allowance of the excess of a claim over the value of the security as an unsecured claim "to the extent it is enforceable" is designed to give effect to legislation forbidding deficiency judgments on some claims. This rule is not intended to deprive the creditor of any election he has under such legislation to claim as an unsecured rather than as a secured creditor. The court may use any of the modes for determining the value of security specified in § 57h or any other method, including appraisal, which it deems appropriate.

Rule 13-308. Reconsideration of Claims.

Within 10 days of the entry of an order allowing or disallowing a claim against the estate, a party in interest may move for reconsideration. If the motion is granted, the court may after hearing on notice make such further order as may be appropriate.

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This rule is a substantial revision of § 57k of the Act and General Order 21(6), which are applicable in Chapter XIII proceedings. *In re Cote*, 313 F.Supp. 509 (D.Me. 1970). Because these provisions have spoken only of the reconsideration of claims that have been allowed, it has sometimes been held that a referee has no jurisdiction to reconsider a disallowed claim, or the amount or priority of an allowed claim, at the instance of the claimant himself. See, *e.g., In re Gouse*, 7 F.Supp. 106 (M.D.Pa. 1934); *In re Tomlinson & Dye, Inc.*, 3 F.Supp. 800 (N.D.Okla. 1933). This view disregarded § 2a(2) of the Act and the "ancient and elementary power" of a referee as a court to reconsider any of his orders. *In re Pottasch Bros. Co., Inc.*. 79 F.2d 613, 616 (2d Cir. 1935); *Castaner v. Mora*, 234 F.2d 710 (1st Cir. 1956). This rule recognizes the power of the court, including a referee to reconsider an order of disallowance on appropriate and timely motion.

Reconsideration of a claim that has been previously allowed or disallowed after objection is discretionary with the court. The right to seek reconsideration of an allowed claim, like the right to object to its allowance, should be recognized to rest in the trustee, although the debtor and other creditors may also do so. A request for reconsideration of a disallowance would, on the other hand, ordinarily come from the claimant, the only party likely to have a sufficient interest to make the motion.

A proof of claim executed and filed in accordance with the rules in this Part III is prima facie evidence of the validity and amount of the claim notwithstanding a motion for reconsideration of an order of allowance. Failure to respond constitutes no admission, though it may be deemed a consent to reconsideration. *In re Goble Boat Co.*, 190 Fed. 92 (N.D.N.Y. 1911). But on reconsideration, as on original allowance, the court may direct the creditor to establish that his claim is free from any charge forbidden by applicable law. Reconsideration of allowance or disallowance of a secured claim may, of course, involve reconsideration of the valuation of collateral pursuant to Rule 13-307(d).

The court may decline to reconsider an order of allowance or disallowance without notice to any adverse party and without affording any hearing to the movant. If a motion to reconsider is granted, notice and hearing must be afforded to the parties in interest before the previous action taken in respect to the claim may be vacated or modified. After reconsideration, the court may allow or disallow the claim, increase or decrease the amount of a claim allowed as a secured claim or as an unsecured claim, accord the claim a priority different from that originally assigned it, or enter any other appropriate order.

On disallowance after reconsideration the trustee may recover dividends previously paid on the claim, as provided in § 57*l* of the Act and any such recovered dividends not required to make payments under the plan or the Act should be returned to the debtor pursuant to Rule 13-309(c).

Rule 13-309. Priority Payments; Dividends; Surplus Funds.

(a) Priorities.

(1) *First Payment.* In advance of or at the time of payment of the first dividend to creditors under the plan there shall be paid, out of money paid in by or for the debtor, in the following order:

(A) any installment of filing fees ordered to be paid pursuant to Rule 13-106(b)(2) and then due under such order;

(B) the actual and necessary costs and expenses incurred by the trustee;

(C) the additional fee prescribed for the referees' salary and expense fund and the trustee's commission;

(D) a reasonable fee to the attorney for the debtor for professional services actually theretofore rendered by such attorney in connection with the Chapter XIII case;

(E) where the petition is filed pursuant to Rule 13-104, the costs and expenses of administration and the fees of the superseded bankruptcy case;

(F) other debts entitled to priority under, and in the order prescribed by, § 64a of the Act.

(2) *Subsequent Payments.* In advance of or at the time of payment of any subsequent dividend to creditors there shall be paid, out of money paid in by or for the debtor, in the following order:

(A) any installment of filing fees ordered to be paid pursuant to Rule 13-106(b)(2) and then due under such order;

(B) any actual and necessary costs and expenses incurred by the trustee and not previously paid:

(C) the additional fee prescribed for the referee's salary and expense fund and the trustee's commission, to the extent that either has not been previously paid;

(D) a reasonable fee to the attorney for the debtor for professional services actually theretofore rendered by such attorney in connection with the Chapter XIII case and not previously paid.

(3) *Waiver.* A person entitled to priority of payment under paragraph (1) or (2) of this subdivision (a) may waive such priority by failing to reject a plan providing for such waiver within the time specified in Rule 13-202(a) or by other waiver, but any other payment which such person receives in lieu thereof must be provided for in the plan or otherwise approved by the court.

(b) Dividends.

(1) *Payment.* Except as otherwise provided in the plan, dividends to creditors shall be paid as promptly as practicable in such amounts and at such times as the court may order. Dividend checks shall be made payable and mailed to each creditor whose claim has been allowed, unless a power of attorney authorizing another person to receive dividends has been executed and filed in accordance with Bankruptcy Rule 910. In that event, unless a local rule or court order provides otherwise, dividend checks shall be made payable to the creditor and to such other person and shall be mailed to such other person.

(2) *Small Dividends.* The court may by local rule or order direct that no dividend for less than $15 shall be distributed by the trustee to any creditor, but dividends not distributed because of such rule or order shall accumulate and shall be paid whenever such accumulation aggregates $15. Any accumulated balance shall be paid with the final dividend.

(c) Surplus Funds.

Except as provided in Rule 13-310, any funds remaining in the estate on consummation of the plan shall be returned to the debtor.

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Paragraph (1) and (2) of subdivision (a) of this rule are derived from §§ 40c(2)(c) and 659 of the Act. The costs of the referee referred to in § 659(1) are now included in the filing fees referred to in subparagraphs (A) of paragraphs (1) and (2).

While the items specified in paragraphs (1) and (2) of subdivision (a) of this rule are to be paid in advance or at the time of dividends to creditors under the plan, and in the order listed where they are not paid simultaneously, those listed in subparagraphs (B), (C), and (D) of paragraph (1) are to be paid only to the extent incurred, computable, or earned, respectively. Thus, on or before the payment of the first dividend to creditors under the plan, there must be payment of costs and expenses actually incurred to that time by the trustee, payment of the additional fee for the salary and expense fund and the trustee's commission which will be computed on the total payments made at that time (including the first dividend, if it is paid simultaneously), and a reasonable fee to the debtor's attorney for services actually rendered up to that time. But the items specified in subparagraphs (E) and (F) of paragraph (1) should be paid in full in advance of or simultaneous with the first dividend to creditors under the plan. Additional payments on the items specified in subparagraph (C) of paragraph (2) will be due, and additional payments on those specified in subparagraphs (A), (B), and (D) of paragraph (2) may be due in advance of or at the time of payment of subsequent dividends.

Under paragraph (3) of subdivision (a) of this rule, any person entitled to priority under paragraphs (1) or (2) may waive his priority. The plan may then make other provision for his payment or arrangements may be made for his payment apart from the plan if such arrangements are approved by the court.

The first sentence of paragraph (1) of subdivision (b) consolidates and considerably simplifies provisions found in §§ 39a(5), 47a(11), and 65b of the Act. This sentence does not contemplate that there must be a separate order of the court for each payment of dividends. The preparation of records showing dividends declared and to whom payable is subject to prescription by the Director of the Administrative Office pursuant to Bankruptcy Rule 504 (a), made applicable by Rule 13-501. Subdivision (b) governs distributions to secured as well as to unsecured creditors. Notwithstanding the detailed statutory provisions regulating the declaration of dividends, a necessarily wide discretion over this matter has been recognized to reside in the court. See 3A Collier ¶ 65.03 (1964); 1 *Proceedings of Seminar for Newly Appointed Referees in Bankruptcy* 173 (1964). In addition, in Chapter XIII cases there is always the possibility that the debtor may encounter temporary difficulties in making payments under the plan and that post-petition claims may be allowed pursuant to Rule 13-305. For these reasons the provisions of the plan may also leave a considerable discretion in the court as to the time and amount of distributions.

Although paragraph (1) of subdivision (b) leaves to the discretion of the court the amounts and the times of dividend payments save as otherwise provided in the plan, it recognizes the creditors' right to as prompt a payment as practicable. The second and third sentences of paragraph (1) of subdivision (b) make explicit the method of payment of dividends and afford protection to the interests of the creditor and the holder of a power of attorney authorized to receive payment. Official Form No. 13-8 provides a form of power of attorney authorizing an agent to receive payment.

Paragraph (2) of subdivision (b) permits the court by local rule or order to eliminate the disproportionate expense and inconvenience incurred by the issuance of a dividend check of less than $15. Creditors are typically more irritated than pleased to receive such small dividends, but small dividends unpaid because of such a local rule or order will accumulate and will in any event be paid no later than the final dividend.

Subdivision (c) of the rule, providing for refund to the debtor of any surplus funds remaining after consummation of the plan, codifies the prevailing local practice.

Rule 13-310. Unclaimed Funds.

Sixty days after the distribution of the final dividend, the trustee shall stop payment of all checks then unpaid and file with the clerk of the district court a list of the names and addresses, so far as known, of the persons entitled to such payments and the amounts thereof. The unclaimed funds shall thereupon be deposited in the registry of the United States district court and shall be withdrawn as provided in Title 28, U.S.C., § 2042.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is derived from § 66 of the Act. The provision of the Act that the unclaimed money so deposited shall not be subject to escheat under the laws of any state is a rule of substantive law not appropriate for inclusion in the rule.

PART IV.—THE DEBTOR: DUTIES AND BENEFITS

Rule 13-401. Petition as Automatic Stay of Actions Against Debtor and of Lien Enforcement.

(a) Stay of Actions and Lien Enforcement.

A petition filed under Rule 13-103 or Rule 13-104 shall operate as a stay of the commencement or continuation of any action against the debtor, or the enforcement of any judgment against him, or of any act or the commencement or continuation of any court proceeding to enforce any lien against his property, or of any court proceeding for the purpose of rehabilitation of the debtor or the liquidation of his estate.

(b) Duration of Stay.

Except as it may be deemed annulled under subdivision (c) or may be terminated, annulled, modified, or conditioned by the bankruptcy court under subdivision (d), (e) or (f) of this rule, the stay shall continue until the case is closed, dismissed, or converted to bankruptcy or the property subject to the lien is, with the approval of the court, abandoned or transferred.

(c) Annulment of Stay.

At the expiration of 30 days after the first date set for the first meeting of creditors, the stay provided by this rule other than a stay against lien enforcement shall be deemed annulled as against any creditor whose claim has not been listed in the Chapter XIII Statement and who has not filed his claim by that time.

(d) Relief from Stay.

On the filing of a complaint by a creditor who has timely filed his claim or who is secured by an estate in real property or chattels real seeking relief from a stay provided by this rule, the bankruptcy court shall, subject to the provisions of subdivision (e) of this rule, set the trial for the earliest possible date, and it shall take precedence over all matters except older matters of the same character. The court may, for cause shown, terminate, annul, modify, or condition such stay. A party seeking continuation of a stay against lien enforcement shall show that he is entitled thereto.

(e) Ex Parte Relief from Stay.

Upon the filing of a complaint by a creditor who has timely filed his claim or who is secured by an estate in real property or chattels real seeking relief from a stay provided by this rule against any act or the commencement or continuation of any court proceeding to enforce any lien, or any proceeding for the purpose of rehabilitation of the debtor or liquidation of his estate, relief may be granted without written or oral notice to the trustee or the debtor if (1) it clearly appears from specific facts shown by affidavit or by a verified complaint that immediate and irreparable injury, loss, or damage will result to the plaintiff before the trustee or the debtor can be heard in oppsition, and (2) the plaintiff's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting his claim that notice should not be required. The party obtaining relief under this subdivision shall give written or oral notice thereof as soon as possible to the trustee and to the debtor and, in any event, shall forthwith mail to such persons a copy of the order granting relief. On 2 days' notice to the party who obtained relief from a stay provided by this rule without notice, or on such shorter notice to that party as the court may prescribe, the trustee or the debtor may appear and move its reinstatement, and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(f) Availability of Other Relief.

Nothing in this rule precludes the issuance of, or relief from, any stay, restraining order, or injunction when otherwise authorized.

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This rule supplements and reinforces the policy of §§ 2a(15), 11a, 14f(2), 17c(4), 611 and 614 of the Act. Section 11a. provides in terms for a mandatory stay until adjudication or dismissal of the petition of all actions founded on dischargeable claims which are pending against the debtor when the petition is filed. This statutory provision has been further held to authorize stay of the enforcement by levy of execution or otherwise of a judgment on a dischargeable debt. 1 Collier ¶ 11.03 (1960). As a matter of comity application for the stay has frequently been made heretofore to the court where the action is pending, but the Act and the case law do not recognize any discretion in the court to deny or condition the stay against creditors holding dischargeable debts. *Id.* ¶¶ 11.05, 11.08.

By amendatory legislation in 1970, Congress substantially extended the protection of a debtor against action by his creditors well beyond the limits of § 11a. Section 17c(4) now authorizes the bankruptcy court to enjoin any creditor from instituting or continuing an action on any debt, whether or not it is dischargeable and whether before or after adjudication. This provision is correlated with two other amendments of the Act protective of debtors: (1) Paragraphs (1) and (2) of § 17c provide for a determination of the issue of dischargeability of any debt by the bankruptcy court and for the determination of any issues remaining after it determines that any debt is nondischargeable; and (2) Section 14(f)(2) requires that an order of discharge enjoin all creditors whose debts are discharged from thereafter instituting or continuing any action or employing any process to collect such debts as personal liabilities of the bankrupt.

In addition, in a Chapter XIII case, § 614 authorizes the stay until final decree closing the estate of pending actions and of the commencement of actions whether or not founded on dischargeable claims. Section 614 also authorizes the stay until final decree closing the estate of any act or proceeding to enforce any lien on the property of a debtor. The term "lien" is used in this rule to indicate a consensual security interest in personal or real property, a lien obtained by judicial proceedings, a statutory lien, or any other variety of charge against such property securing an obligation. While the authority conferred by § 614 with respect to staying enforcement of liens is to be exercised upon notice and for cause shown, § 611 also gives the court exclusive jurisdiction of the debtor and his property wherever located and this jurisdictional grant has been construed to mean that a secured creditor who has rejected the plan and whose claim is in default may not, even in the absence of a stay, resort to self-help to repossess its collateral, but must file a reclamation petition with the court. *First National Bank v. Cope*, 385 F.2d 404 (1st Cir. 1967). The relief from a stay obtainable under subdivision (d), (e), or (f) of the rule could appropriately include permission to reclaim collateral.

While under §§ 606(1) and (4) and 646(2) the plan may not deal with claims secured by interests in real property, it has been recognized that the term "property" as used in both § 611 and § 614 includes such interests, that the court has the power to stay foreclosure of liens on real property, and that such power is properly exercised where the debtor has an equity in the property or it is necessary to his performance under the plan, the creditor's security is not impaired by the stay, and the stay is conditioned on appropriate provision for curing defaults and maintaining payments on the secured claim. *Hellenbeck v. Penn Mutual Life Ins. Co.*, 323 F.2d 566 (4th Cir. 1963); *In re Garrett*, 203 F.Supp. 459 (N.D.Ala. 1962); *In re Pizzolato*, 281 F.Supp. 109 (N.D.Ark. 1967); *In re Howard*, 344 F.Supp. 1138 (E.D.Ark. 1971). See also *In re Willett*, 265 F. Supp. 999 (S.D. Calif. 1967).

Although under § 652(1) a plan may not be confirmed if not accepted by any creditor secured by an interest in personal property whose claim is dealt with, *Interstate Finance Corp. v. Serogham*, 265 F.2d 889 (6th Cir. 1959), it has been recognized also that such a nonaccepting creditor is in essentially the same position under §§ 611 and 614 as a creditor secured by an interest in real property. Hence, he may be excluded from the plan and, where the debtor has an equity in the property or it is necessary to his performance under the plan and where the creditor's security will not be impaired by a stay, the creditor may be stayed from foreclosing on appropriate conditions to cure defaults and maintain payments on his claim to the extent that it is secured. *In re Clevenger*, 282 F.2d 756 (7th Cir. 1960); see also *In re Duncan*, 33 F.Supp. 997 (E.D.Va. 1940), under similar circumstances and on similar conditions a secured creditor's reclamation petition may be denied. *In re Rutledge*, 277 F.Supp. 933 (E.D.Ark 1967); *In re Pizzolato*, 268 F.Supp. 363 (W.D.Ark. 1967). See also *In re Willett*, 265 F.Supp. 999 (S.D.Calif. 1967).

It is clear under the statutory language and the case law that the stay against a creditor secured by an interest in real property or against a nonaccepting creditor secured by an interest in personal property is discretionary. And it has also been held that the ex parte stay which § 614 authorizes against unsecured creditors should not issue automatically, but only on a showing of facts sufficient to justify exercise of judicial discretion. *In re Arzaga*, 204 F.Supp. 617 (S.D.Calif. 1962). But protection of the debtor against litigation that will be pointless and needless if he keeps up payments on secured debts not dealt with by the plan and if he is granted a discharge of other debts provided for by the plan, ordinarily affords ample justification for extension of the relief.

Subdivision (a). The rule relieves the debtor from the necessity for filing an application for a stay or an injunction, leaving it open to any creditor to obtain relief from the stay. Such relief may consist of a continuation of the stay conditioned on the curing of defaults and the maintenance of payments on a secured claim not dealt with by the plan. All creditors receive notice of the effect of the petition as a stay along with notice of the first meeting of creditors (see Official Form No. 13-7). The bankruptcy court may appropriately also give notice of the stay to the judge or other officer of a nonbankruptcy court in which an action subject to the stay is known to be pending, particularly when there appears to be a likelihood that action in disregard of the stay may occur. The rule provides an expedited procedure in subdivision (d) for determining the propriety of granting relief from the stay where a special justification exists—*e.g.*, to allow an unliquidated claim to be determined by a judgment in a pending action, as in *In re Gerstenzang*, 52 F. 2d 863, 864 (S.D.N.Y. 1931), or to enable the creditor to satisfy a condition to the enforcement of the claim against a surety, as in *Manufacturers' Finance Corp.* v. *Vye-Neill Co.*, 46 F. 2d 136 (D. Mass. 1930), aff'd, 62 F. 2d 625, 628 (1st Cir.) cert. denied, 289 U.S. 738 (1933). In addition, subdivision (e) of the rule provides for ex parte relief from a stay against lien enforcement. And in Chapter XIII cases a creditor secured by an interest in personal property who does not accept the plan has been allowed to reclaim his collateral where no provision is made for maintaining payments on his claim. *Terry* v. *Colonial Stores Employee's Credit Union*, 411 F. 2d 553 (5th Cir. 1969); *In re Copes*, 206 F. Supp. 329 (D.Kan. 1962).

Under subdivision (a) of the rule the petition will operate as a stay of any action or the enforcement of any judgment or any act or proceeding to enforce a lien on a claim which is provided for by the plan but which is not dischargeable under § 17a of the Act because not provable under § 63 or because excepted from the discharge by § 17a. Such claims are subject to Chapter XIII by virtue of § 606(1) of the Act and are dischargeable under § 660 or § 661 if held by creditors who have accepted the plan. See *In re Willett*, 265 F. Supp. 999 (S.D. Calif. 1967).

Under subdivision (a) the petition will also operate as a stay of any action, or the enforcement of any judgment, or an act or proceeding to enforce a lien on such claims provided for by the plan even though not dischargeable under § 17a and § 660 or § 661 because held by creditors who have not accepted the plan. As contemplated by § 614, the debtor should still have an opportunity to make payments on such claims under the plan. The stay will operate in the same fashion against claims which are not dischargeable under § 660 or § 661 because not provided for by the plan. Since the plan is required by § 646(1) of the Act to deal generally with all unsecured claims, the claims not provided for by the plan will be claims secured by real property (discussed in the fourth paragraph of this Note), claims secured by personal property (discussed in the fifth paragraph of this Note), or claims not scheduled in time for proof and allowance (discussed in the next paragraph of this Note).

Subdivision (c). Even though a claim is not listed in the Chapter XIII Statement as originally filed, it cannot be said to be nondischargeable unless, without the creditor's notice or knowledge, the case has progressed so far that it is too late for the omitted creditor to prove his claim and participate in distributions under the plan and in significant matters arising in the administration of the case. Subdivision (c) rests on the assumption that when the time therein specified has expired without a claim being listed or filed it is probably non-dischargeable and the stay provided by this rule is accordingly annulled. As recognized by subdivision (f), the debtor may nevertheless be able to obtain a stay or an injunction under the Act.

Subdivision (d). A creditor who has timely filed his claim or who is secured by an interest in real property may obtain relief from the stay of this rule in appropriate cases by filing a complaint in the court pursuant to subdivision (d). The adversary proceeding thereby commenced is governed by Part VII of the Bankruptcy Rules, subject to the requirement of subdivision (d) of this rule that the trial be set for the earliest possible date and given precedence over all older matters not of the same character. As noted in the previous paragraph, a stay against an omitted creditor is annulled when the time specified in subdivision (c) has expired without his claim being listed or filed. If he should file his claim and seek relief from the stay before that time, he would disclose his knowledge of the case and thereby substantially undermine his request for relief.

Subdivision (e). Under the extraordinary circumstances spelled out in subdivision (e) of the rule, secured creditors may be granted relief from the stay against enforcement of their liens immediately and without notice. In such an event, however, the trustee or the debtor is entitled to move for reinstatement of the stay on 2 days' notice, or on shorter notice if the court approves. The procedure provided under subdivision (e) is patterned on that governing the issuance of a temporary restraining order under Rule 65(b) of the Federal Rules of Civil Procedure, but the order granting the relief from the stay is not subject to the 10-day limit that applies to a temporary restraining order. If there is no motion for reinstatement of the stay after relief has been granted under subdivision (e), the order granting such relief may remain effective until the proceeding is dismissed, closed, or converted to bankruptcy, in which latter event Bankruptcy Rule 601 would become applicable.

Subdivision (f). As subdivision (f) recognizes, the right of the debtor under §§ 2a(15), 11a, 17c(4), 611 and 614 of the Act to obtain an injunction against the institution or continuance of an action, or the enforcement of a judgment, or any act or the commencement or continuation of any proceeding to enforce a lien against his property, or any rehabilitatory or liquidation proceeding is not affected by this rule. Such relief may be sought by answer to a complaint of the creditor filed under subdivision (d) or (e) of this rule, as well as by complaint. See Bankruptcy Rules 701, 713, and 765, made applicable by Rule 13-701. The court may terminate, annul, modify, or condition the stay provided by this rule in any proceeding brought for the purpose of obtaining such relief or of obtaining an injunction or restraining order. An annulment may be appropriate when a judgment has been inadvertently entered or a judgment or a lien inadvertently enforced notwithstanding the stay.

The premise of the rule is that in the usual case actions should be stayed even on nondischargeable claims, in order to permit the debtor to make payments on them under the plan, and even on claims not provided for by the plan so long as the debtor cures defaults and keeps future payments current. The rule not only relieves, the debtor against the risk of failing to seek timely relief against creditors' actions but eliminates the need for litigation of the right to stay in the usual case. While the initiaitve for raising the issue of the right to a stay is shifted from the debtor to the creditor, facts providing a justification for modifying the stay will ordinarily be more easily provable by the creditor than disprovable by the debtor. The rule does not supersede §§ 2a(15), 11a, 17c(4), 611, or 614 of the Act or restrict the discretion of the court as a court of equity to grant relief to any party.

Rule 13-402. Duties of Debtor.

In addition to performing other duties prescribed by these rules, the debtor shall (1) attend and submit to an examination at the first meeting of creditors and at such other times as ordered by the court; (2) attend at the hearing on confirmation of a plan and the hearing on a complaint objecting to his discharge, if any, and, if called as a witness, testify with respect to the issues raised; (3) if the court directs, file a statement of the executory contracts, including unexpired leases, to which he is a party; (4) cooperate with the trustee in the preparation of an inventory, the examination of proofs of claim, and the administration of the estate; and (5) comply with all orders of the court.

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Together with Rule 13-107, which adapts the provisions of § 7a(8) and (9) and § 624(1) of the Act, and Rule 13-206, which incorporates the provisions of § 7a(10) of the Act, this rule imposes substantially all the duties prescribed for the debtor by § 7a of the Act and, in addition, requires the debtor to attend the hearing on confirmation of a plan and, if called as a witness, to testify at such hearing. Since issues in such a confirmation hearing may, under § 656(a)(3) of the Act, include some of those raised under § 14c, the debtor's testimony may be as essential in such a hearing as is a bankrupt's testimony on a complaint objecting to his discharge. Since these rules do not require the debtor to file a statement of executory contracts in every case, clause (3) authorizes the court to direct the debtor to file such a statement in a particular case.

Rule 13-403. Exemptions.

A debtor shall claim his exemptions in the Chapter XIII Statement required to be filed by Rule 13-107.

NOTES OF ADVISORY COMMITTEE ON RULES

Exemptions should be claimed in the Chapter XIII Statement since that statement, unless otherwise directed by the court pursuant to Bankruptcy Rule 122, will serve in lieu of schedules if the case is converted to bankruptcy pursuant to Rule 13-112 or Rule 13-215. Since in the ordinary Chapter XIII case the setting apart of exemptions serves no purpose, this rule supersedes the requirement of § 637 of the Act that the debtor's exemptions be set apart.

Rule 13-404. Grant or Denial of Discharge.

(a) Where Debtor Has Completed Performance.

On completion by the debtor of all payments under the plan, the court shall forthwith grant the debtor his discharge unless he has filed a waiver under Rule 13-405.

(b) Where Debtor Has Not Completed Performance.

(1) *Application and Notice.* A debtor who has not completed his payments under the plan may by application request a discharge under § 661 of the Act. On the filing of such application the court shall fix a time for the filing of a complaint objecting to the debtor's discharge and shall give at least 30 days' notice of the time so fixed to all creditors in the manner provided in Rule 13-203 and to the trustee. The court may for cause, on its own initiative or on application by any party in interest, extend the time for filing a complaint objecting to discharge.

(2) *Grant of Discharge.* On expiration of the time fixed for filing a complaint objecting to discharge, the court shall forthwith grant the discharge if no complaint objecting to discharge has been filed and if satisfied, after hearing on notice to the debtor, that the debtor's failure to complete payments was due to circumstances for which he could not justly be held accountable, unless the debtor has filed a waiver under Rule 13-405.

(3) *Applicability of Part VII of Bankruptcy Rules.* A proceeding commenced by a complaint objecting to discharge is governed by Part VII of the Bankruptcy Rules.

(c) Order of Discharge.

An order of discharge shall conform substantially to Official Form No. 13-16.

(d) Registration in Other Districts.

An order of discharge that has become final may be registered in any other district by filing in the office of the clerk of the district court of that district a certified copy of the order and when so registered shall have the same effect as an order of the court of the district where registered and may be enforced in like manner.

(e) Notice of Discharge.

Within 45 days after an order of discharge becomes final, the court shall mail a copy of such order to the persons specified in subdivision (b)(1) of this rule.

NOTES OF ADVISORY COMMITTEE ON RULES

Subdivisions (a) and (b) of this Rule are derived from §§ 14b, 58b, 660 and 661 of the Act. No position is taken in these rules as to whether, or the extent to which, some or all grounds for objection to a bankruptcy discharge under § 14c, once available as an objection to confirmation of a plan not accepted by all affected creditors under § 656(a)(3) of the Act, are again available as objections to discharge under subdivision (b) of the rule. *Cf. Perry v. Commerce Loan Co.*, 383 U.S. 392 (1966). The time fixed by the court under paragraph (1) of subdivision (b) may be enlarged as provided in that paragraph and in Bankruptcy Rule 906(b), made applicable by Rule 13-901.

The notice referred to in paragraph (1) of subdivision (b) is required to be given by mail and addressed to creditors as provided in Rule 13-203 and to the trustee. The provision of § 58b of the Act for notice to the United States attorney of the time for filing objections to discharge has not been carried into the rule because of the ineffectualness of such a routine notice to serve its purpose of alerting that officer to the possible need for him to file a complaint objecting to discharge. When the circumstances indicate the appropriateness of calling on the United States attorney to take an interest in the question of the debtor's discharge, the court may act under § 14d of the Act. See also 18 U.S.C. § 3057.

An extension granted on an application pursuant to the last sentence of paragraph (1) of subdivision (b) of the rule would ordinarily redound to the benefit only of the applicant, but the scope and effect of the extension would in any event depend on the terms of the extension.

Subdivision (a) and paragraph (2) of subdivision (b) of the rule are revisions of the first clause of § 14b(2) of the Act so far as applicable to Chapter XIII cases. The last clauses in subdivision (a) and in the first sentence of paragraph (2) of subdivision (b) qualifying the duty of the court to grant a discharge when a waiver has been filed are in accord with the construction of the Act. 1A Collier, ¶ 14.16 (1966). If a complaint objecting to discharge is filed, the adversary proceeding thus commenced is governed by Part VII of the Bankruptcy Rules, and the judgment granting or denying a discharge is entered in accordance with Bankruptcy Rule 921, made applicable by Rule 13-901.

Subdivision (c). Official Form No. 13-16, to which subdivision (c) refers, includes the provisions which are required by § 14f of the Act to be set out in the order of discharge.

Subdivision (*d*) is based on § 14g of the Act. Registration may facilitate the enforcement of the order of discharge in a district other than that in which it was entered. See 2 Moore, *Federal Practice* ¶ 1.04[2] (2d ed. 1967). Because of the extraterritorial service of process authorized by Rule 13-701 and Bankruptcy Rule 704, however, registration of the order of discharge is not necessary under these rules to enable a discharged debtor to obtain relief against a creditor proceeding in any district of the United States in disregard of the injunctive provision of the order of discharge.

Subdivision (*e*) is based on § 14h of the Act but omits its requirement that notice be given of the debts determined by the court to be nondischargeable and of the debts as to which proceedings to determine dischargeability are pending. The debtor and every creditor whose debt is the subject matter of any proceeding to determine dischargeability will otherwise have had notice of its pendency or disposition. Parties other than the debtor and the creditor involved have no sufficient need of notice of the pendency or determination of such proceedings to warrant inclusion of this information in the notice of discharge required by subdivision (e). The debts to be specified in the notice required by § 14h of the Act could not in any event purport to be a complete list of the debts that may be nondischargeable.

Rule 13-405. Waiver of Discharge.

Any debtor may waive his right to discharge by a writing filed with the court.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is an adaptation of the first sentence of the proviso of § 14a of the Act.

Rule 13-406. Notice of Nondischarge.

If a waiver of discharge is filed, or if an order is entered denying or revoking a discharge, the court shall, within 30 days after filing of the waiver or the entry of the order, give notice thereof by mail to all creditors in the manner provided in Rule 13-203.

NOTES OF ADVISORY COMMITTEE ON RULES

The suspension by § 676 of the Act of statutes of limitations affecting any claims provable under Chapter XIII runs until the case is closed or dismissed, which normally will occur shortly after a discharge is waived or denied and may occur before a discharge is revoked. If, however, a debtor's failure to get a discharge does not come to the attention of his creditors until after the statute of limitations has run, he obtains substantially the same benefits from the case as the debtor who is discharged.

This new rule requires the court to notify creditors if a debtor fails to obtain a discharge or if his discharge is revoked.

Rule 13-407. Determination of Dischargeability of a Debt; Judgment on Nondischargeable Debt; Jury Trial.

(a) Proceeding to Determine Dischargeability.

(1) *Persons Entitled to File Complaint; Time for Filing in Ordinary Case.* A debtor or any creditor may file a complaint with the court to obtain a determination of the dischargeability of any debt. Except as provided in paragraph (2) of this subdivision, the complaint may be filed at any time, and a case may be reopened without the payment of an additional filing fee for the purpose of filing a complaint under this rule.

(2) *Time for Filing Complaint Under § 17c(2) of the Act; Notice of Time Fixed.* On or before the completion by a debtor of payments under a plan, or on application by a debtor for a discharge under § 661 of the Act, the court shall make an order fixing a time for the filing of a complaint to determine the dischargeability of any debt pursuant to § 17c(2) of the Act and shall give at least 30 days' notice of the time so fixed to all creditors in the manner provided in Rule 13-203 and to the trustee. The court may for cause, on its own initiative or on application of any party in interest, extend the time fixed under this paragraph.

(b) Claim and Demand for Judgment on Nondischargeable Debt.

If his claim has not yet been reduced to judgment, the creditor shall include in a complaint or answer filed under subdivision (a) of this rule a statement of his claim and a demand for judgment on the debt as provided in § 17c(3) of the Act.

(c) Jury Trial.

Either party may demand a trial by jury of any issue triable of right by a jury by serving on the other party and filing a demand therefor in writing at any time after the filing of a complaint under this rule and not later than 10 days after the service of the last pleading directed to such issue. Such demand may be indorsed on a pleading of the party. In his demand the party shall specify the issues which he wishes to be so tried. If he has demanded trial by jury for only some of the issues so triable of right, any other party, within 10 days after service of the demand or such lesser time as the court may order, may serve a demand for trial by jury of any other issues so triable of right in the proceeding. The trial of an issue for which a jury trial has been demanded shall be placed on the jury calendar of the district court when it is ready for trial unless (1) the bankruptcy judge determines after hearing on notice that the issue is not triable of right by a jury or (2) a local rule of court provides otherwise. Issues not triable of right by a jury may be tried by the bankruptcy judge, and motions and applications in the proceeding other than those necessarily incidental to and made during the course of the jury trial may be determined by the bankruptcy judge. The failure of a party to serve and file a demand in accordance with this rule constitutes a waiver by him of trial by jury. Rules 47–51 of the Federal Rules of Civil Procedure apply to a jury trial under this subdivision.

(d) Applicability of Part VII of Bankruptcy Rules.

A proceeding commenced by a complaint filed under this rule is governed by Part VII of the Bankruptcy Rules.

Notes of Advisory Committee on Rules

This rule prescribes the procedure to be followed when a party requests the bankruptcy court to determine dischargeability of a debt pursuant to § 17c of the Act. The court need not determine the issues presented by the complaint filed under this rule until the question of discharge has been determined under Rule 13–404.

Jury Trial. Subdivision (c) preserves the right to jury trial where it exists under nonbankruptcy law and is an adaptation of the provisions of the Federal Rules of Civil Procedure that govern jury trials. Under the fifth sentence of the subdivision a demand for jury trial requires placement of an issue triable of right by the jury on the calendar of jury trials to be conducted by a district judge, but the bankruptcy judge may deny the demand if he determines after notice and hearing that there is no issue triable of right by a jury. The same sentence recognizes, however, that a local rule of court may make different provisions respecting the placement on the jury calendar, *e.g.*, by providing for immediate placement of the issue on the district court's calendar and restricting authority to grant or deny the demand to a judge of that court, or by providing for retention of the entire proceeding by the referee with authority to conduct the jury trial in the bankruptcy court.

PART V.—COURTS OF BANKRUPTCY; OFFICERS AND PERSONNEL; THEIR DUTIES

Rule 13-501. Administrative Matters.

Part V of the Bankruptcy Rules applies in Chapter XIII cases.

Notes of Advisory Committee on Rules

Part V of the Bankruptcy Rules (Rules 501 to 515 inclusive) is incorporated to govern certain administrative matters in Chapter XIII cases. Rule 13–2 indicates the substitution and translation of terms necessary for this purpose.

PART VI.—PROPERTY OF THE ESTATE

Rule 13-601. Burden of Proof as to Validity of Post-Petition Transfer.

Any person asserting the validity of a transfer under § 70d of the Act shall have the burden of proof.

Notes of Advisory Committee on Rules

This rule is derived from § 70d(5) of the Act.

Rule 13-602. Accounting by Prior Custodian of Property of the Estate.

(a) Accounting Required.

Any receiver or trustee appointed in proceedings not under the Act, assignee for the benefit of creditors, or agent, required by the Act to deliver property in his possession or control to the trustee, shall promptly file a written report and account with the bankruptcy court with respect to the property of the estate and his administration thereof.

(b) Examination of Administration.

On the filing of the report an account required by subdivision (a) of this rule and after an examination has been made into the superseded administration, the court shall determine the propriety of such administration, including the reasonableness of all disbursements.

Notes of Advisory Committee on Rules

This rule prescribes the procedure to be followed by any person required to deliver property to the trustee and to account for his disposition of property under §§ 2a(21) and 69d of the Act. See *Emil v. Hanley*, 318 U.S. 515 (1943); *In re Ira Haupt & Co.*, 287 F.Supp. 318, 320–321, 323–324 (S.D.N.Y. 1968), appeal dismissed, 405 F.2d 493 (2d Cir. 1968); and *cf.* § 70a(8) of the Act. The examination under subdivision (b) may be initiated (1) on the application of the custodian required to account under subdivision (a) for approval of his account and discharge thereon, (2) on motion of, or on the filing of an objection to the custodian's account by, the trustee or any other party in interest, or (3) on the court's own initiative. Bankruptcy Rule 914, made applicable by Rule 13–901, applies to any contested matter arising under this rule.

Rule 13-603. Money of the Estate: Deposit and Disbursement.

(a) Deposits; Interest.

The trustee shall deposit all money received by him in a designated depository, either in a checking account or, if authorized by the court, in an interest-bearing account or deposit, and, if authorized by the court, may deposit the funds of more than one estate in the same account or deposit.

(b) Withdrawals and Disbursements.

The trustee shall withdraw and disburse money of the estate only by check or other method approved by the court.

Notes of Advisory Committee on Rules

Subdivision (a) is derived from § 47a(2) of the Act. Designation of a depository is governed by Bankruptcy Rule 512, made applicable by Rule 13–501. The rule preserves the authority granted in 1963 by amendment of § 47a(2), 77 Stat. 14, which enables the court to approve the investment of the funds of the estate in interest-bearing accounts and deposits, including renewable time certificates of deposit, whenever it appears that the funds will necessarily be held by the trustee for a substantial period. See Sen. Rep. No. 147 on H.R. 2849, 88th Cong., 1st Sess. 2 (1963). The "interest-bearing savings deposits, time certificates of deposit, or time deposits-open account" referred to in § 47a(2) are all either interest-bearing accounts or deposits within the rule. Since most Chapter XIII trustees have numerous receipts and make numerous disbursements in relatively small amounts on behalf of many estates, subdivision (a) also permits the court to authorize deposit of the funds of more than one estate in the same account or deposit in the interest of economy and efficiency. The trustee's duty under § 47a(3) of the Act to account for all interest received on funds in the estate is included in the duties prescribed by Rule 13–208.

Subdivision (b) authorizes the trustee to disburse money of the estate not only by check as permitted by § 47a(4) and General Order 29, but by any other method approved by the court. Although Rule 13–208 does require the trustee to keep a record of disbursements, the provisions of General Order 29 requiring checks to be signed by the judge, referee, clerk, or an assistant and particularizing the method of keeping a record of all disbursements are omitted from this rule as too rigid and detailed. Mechanisms for payment through bank accounts are subject to technological and other changes and should not be frozen by rules that cannot anticipate these developments. See Dunne, *Variation on a Theme by Parkinson or Some Proposals for the Uniform Commercial Code and the Check-*

less Society, 75 Yale L.J. 788 (1966). The rule does not preclude the adoption of local rules of general application within a district, or orders of court for particular cases, prescribing countersignature and record-keeping requirements.

Rule 13-604. Rejection of Executory Contracts.

When a motion is made for the rejection of an executory contract, including an unexpired lease, other than as part of the plan, the court shall set a hearing on notice to the parties to the contract and to such other persons as the court may designate.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is derived from § 613(1) of the Act. Rule 13-402(3) authorizes the court to require the debtor to file a statement of his executory contracts. As provided in § 646(6) of the Act, the plan may also include provisions for the rejection of executory contracts of the debtor, and § 642 provides that if an executory contract is rejected by the plan or pursuant to permission given by the court any person injured by such rejection shall be deemed a creditor.

Chapters X, XI and XII of the Act contain substantially identical provisions for rejection of executory contracts with permission of the court (§§ 116(1), 313(1) and 413(1)), or by provisions in the plan (§§ 216(4), 357(2) and 461(4)), and for the claims of those injured by the rejection (§§ 202, 353 and 458). In view of these provisions in Chapter X it has long been recognized that so much of § 70b of the Act as requires the trustee to assume or reject executory contracts within 60 days after adjudication or within 30 days after his qualification, whichever is later, and provides that any contract not assumed or rejected within that time shall be deemed to be rejected, is inapplicable in Chapter X proceedings. *Texas Importing Co. v. Banco Popular de Puerto Rico*, 360 F.2d 582 (5th Cir. 1966); *Title Insurance & Guaranty Co. v. Hart*, 160 F.2d 961 (9th Cir.) cert. denied 332 U.S. 761 (1947); *In re M & S Amusement Enterprises, Inc.*, 122 F.Supp. 364 (D.Del. 1954); *In re Childs Co.*, 64 F.Supp. 282 (S.D.N.Y. 1944). See also *In re Imperial "400" National, Inc.*, 429 F.2d 680 (3rd Cir. 1970). As was said in *Texas Importing Co. v. Banco Popular de Puerto Rico, supra* at p. 584, these provisions in Chapter X "clearly indicate Congress intended that before an executory contract should be rejected, a judicial hearing and inquiry, at which interested parties might be heard, should be held, and that an executory contract could be rejected only with permission of the court. . . ." See also *B.J.M. Realty Corp v. Ruggiori*, 326 F.2d 281 (2d Cir. 1963) and *B.J.M. Realty Corp. v. Ruggieri*, 338 F.2d 653 (2d Cir. 1964), holding that a lessor waived his option to terminate a lease by accepting rental payments for four months following the filing of a Chapter XI petition by the lessee, so that the lease could thereafter be affirmed, and *Floro Realty & Investment Co. v. Steem Electric Corp.*, 128 F.2d 338 (8th Cir. 1942), holding that where the lessor exercises his option to cancel a lease four months after the lessee files a Chapter X petition all liability for future rent is terminated.

It has also been recognized that, under the pertinent provisions of Chapters X and XI, the other party to an executory contract has no provable claim until his contract is rejected so that, if there has been no rejection with permission of the court prior to confirmation of a plan, "he may insist that his contract be either rejected or assumed under the plan and may apply to the . . . court to protect his interest at the confirmation hearing or before." *In re Greenpoint Metallic Bed Co.*, 113 F.2d 881, 884 (2d Cir. 1940); *Monhonk Realty Corp. v. Wise Shoe Stores, Inc.*, 111 F.2d 287, 290 (2d Cir.), cert. denied 311 U.S. 654 (1940). See also *Philadelphia Co. v. Dipple*, 312 U.S. 168, 174 (1941).

This rule provides both the opportunity for parties in interest to raise the question and the opportunity for hearing prior to rejection that the courts have read the Act to require.

Rule 13-605. Abandonment of Property.

After hearing on such notice as the court may direct and on approval by the court the trustee may abandon any property.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is new but codifies the preferred practice developed under case law. See 4A Collier, ¶ 70.42[3] (1967) MacLachlan, *Bankruptcy* 119-20 (1956). Many local rules are to the same effect. S.D. & E.D.N.Y. Banker R. 14(d); N.D.Ill. Banks. R. 18G.

Rule 13-606. Redemption of Property from Lien or Sale.

On application by the trustee or debtor and after hearing on such notice as the court may direct, the court may authorize the redemption of property from a lien or from a sale to enforce a lien in accordance with applicable law.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is a revision of General Order 28 insofar as the general order deals with redemption of property. While General Order 55(2) has made General Order 28 inapplicable in Chapter XIII cases, it will on occasion facilitate the debtor's performance under the plan and aid in his rehabilitation if the trustee or debtor may, under supervision of the court, redeem property from a lien or from a sale to enforce it. Any right to redeem which the debtor has under applicable law will be vested in the trustee under § 70a of the Act until revested in the debtor pursuant to § 701. See 4A Collier ¶¶ 70.18[10], 70.21, 70.991 (1967). Just as the power to stay foreclosure of liens may be exercised to improve the debtor's ability to perform under the plan and to aid in his rehabilitation with respect to secured claims not subject to Chapter XIII or not dealt with by the plan (see Note to Rule 13-401) on terms which protect the security of the creditor, so should the right to redeem from a lien be available for similar purposes and on similar terms.

Ordinarily the secured creditor should be given notice of the trustee's application so that he can raise any objection he may have to the proposed redemption. But the rule recognizes, as does General Order 28, that notice will not always be required.

Rule 13-607. Prosecution and Defense of Proceedings by Trustee.

The trustee may, with or without court approval, prosecute or enter his appearance and defend any pending action or proceeding by or against the debtor, or commence and prosecute any action or proceeding in behalf of the estate, before any tribunal.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is derived from subdivisions b, c, and e of § 11 of the Act, but its application in some instances may be affected by § 701 of the Act under which title to property revests in the debtor on confirmation of a plan or at such later time as may be provided in the plan or the confirming order. The rule, in any event, is not intended to preclude the debtor from prosecuting or defending when the trustee does not do so.

Rule 13-608. Preservation of Voidable Transfer.

Whenever any transfer is voidable by the trustee, the court may determine, in an adversary proceeding in which are joined persons claiming interests or rights in the property subject to the transfer, whether the transfer shall be avoided only or shall be preserved for the benefit of the estate.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is derived from provisions in §§ 60b; 67a(3), 67c(2), 67d(6) and 70e(2) of the Act. The power to preserve a voidable lien for the benefit of the estate probably inheres in the court as a court of equity. *Cf. Jordan v. Hamlett*, 312 F.2d 121, 124 (5th Cir. 1963); *In re Edward Bibingger, Inc.*, 12 App. Div. 2d 237, 239, 210 N.Y.S. 2d 319, 321 (1961); Kennedy, *the Trustee in Bankruptcy as a Secured Creditor Under the Uniform Commercial Code*, 65 Mich. —L. Rev. 1419, 1438 n.68 (1967). This rule is applicable whenever the question arises whether a transfer should be avoided only or preserved for the benefit of the estate.

All persons claiming interests or rights in the property that may be held subject to the rights of the transferee and thus of the trustee by the order of preservation should be joined as parties in the proceeding governed by this rule. Any person holding an interest superior to that of the transferee and not challenged by the trustee need not be pointed in the proceeding since his rights would not be affected by the order of preservation. The holder of such a superior interest should nevertheless be joined as a party to any proceeding in which a sale free of his interest is contemplated unless the validity and priority of the interest are not in question and the holder is fully protected by the terms of the sale. See Bankruptcy Rules 701(3) and 606(b) and the accompanying Notes.

Although §§ 67d(6) and 70e(2) of the Act authorize the preservation of voidable obligations for the benefit of the estate, no instance of the application of either of these preservation provisions has been found in the reported cases. In any event, the determination of the validity and priority of unsecured obligations, and of obligations secured by personal property is governed by Rule 13-307.

Rule 13-609. Proceeding to Avoid Indemnifying Lien or Transfer to Surety.

If a lien voidable under § 67a of the Act has been dissolved by the furnishing of a bond or other obligation and the surety thereon has been indemnified by the transfer of, of the creation of a lien upon, nonexempt property of the debtor, the surety shall be joined as a defendant in any proceeding to avoid the indemnifying transfer or lien. Such proceeding is governed by Part VII of the Bankruptcy Rules. If an order is entered for the recovery of indemnifying property in kind or for the avoidance of an indemnifying lien, the court, on motion by any party in interest, shall ascertain the value of such property or lien; if such value is less than the amount for which such property or lien is indemnity, the surety may elect to retain the property or lien on payment of the value so ascertained to the trustee or debtor, as the case may be, within such time as the court shall fix.

NOTES OF ADVISORY COMMITTEE ON RULES

This rule is derived from § 67a(2) and (4) of the Act.

PART VII.—ADVERSARY PROCEEDINGS

Rule 13-701. Adversary Proceedings.

(a) Adversary Proceedings.

Part VII of the Bankruptcy Rules governs any proceeding instituted by a party before a bankruptcy judge in a Chapter XIII case to (1) recover money or property other than a proceeding under Rule 13-210 or Rule 13-602, (2) determine the validity, priority, or extent of a lien or other interest in property, (3) sell property free of a lien or other interest for which the holder can be compelled to take a money satisfaction, (4) object to or revoke a discharge, (5) obtain an injunction, (6) obtain relief from a stay as provided in Rule 13-401, (7) object to confirmation of a plan on the ground that the debtor has committed any act or failed to perform any duty which would be a bar to the discharge of the bankrupt, (8) revoke the confirmation of a plan, or (9) determine the dischargability of a debt. Such a proceeding shall be known as an adversary proceeding.

(b) Reference in Bankruptcy Rules.

As applied in Chapter XIII cases, the reference in Bankruptcy Rule 741 to "a complaint objecting to the bankrupt's discharge" shall be read to include also a reference to "a complaint objecting to the confirmation of a plan on the ground that the debtor has committed any act or failed to perform any duty which would be a bar to the discharge of a bankrupt."

NOTES OF ADVISORY COMMITTEE ON RULES

Part VII of the Bankruptcy Rules (Rules 701 to 782 inclusive) is incorporated to govern the procedural aspects of most of the litigation within the jurisdiction of court in Chapter XIII cases. Rule 13-2 indicates other substitutions and translations of terms necessary for this purpose.

Subdivision (a) of this rule substitutes an expanded definition of adversary proceedings in Chapter XIII cases for that contained in Bankruptcy Rule 701.

PART VIII.—APPEAL TO DISTRICT COURT

Rule 13-801. Appeal To District Court.

Part VIII of the Bankruptcy Rules applies in Chapter XIII cases except that Rule 802(c) thereof shall read as follows:

"(c). Extension of Time for Appeal. The referee may extend the time for filing the notice of appeal by any party for a period not to exceed 20 days from the expiration of the time otherwise prescribed by this rule. A request to extend the time for filing a notice of appeal must be made before such time has expired, except that a request made after the expiration of such time may be granted on a showing of excusable neglect if the judgment or order is not a judgment or order under Rule 13-213 confirming a plan or is not a judgment or order under Rule 13-112 or Rule 13-215 dismissing a Chapter XIII case or converting a Chapter XIII case to bankruptcy."

NOTES OF ADVISORY COMMITTEE ON RULES

Part VIII of the Bankruptcy Rules (Rules 801 to 814 inclusive) is incorporated to govern appeals from judgments or orders of referees to district courts in Chapter XIII cases.

PART IX.—GENERAL PROVISIONS

Rule 13-901. General Provisions.

Part IX of the Bankruptcy Rules applies in Chapter XIII cases except that:

(1) The references to various rules in Rule 906(b) shall also include references to Rules 13-106(b)(2) and 13-302(e).

(2) The references to various rules in Rule 906(c) shall also include references to Rules 13-203(a), 13-302(e), 13-404(b)(1), and 13-407(a)(2).

(3) The exception in Rule 910(c) for the "the execution and filing of a proof of claim" shall be read to include also "the execution and filing of an acceptance or a rejection of a plan" and the reference to Official Forms in that rule shall include also a reference to Official Form 13-8.

(4) The reference in Rule 913(b) to "a dischargeable debt" shall be read as "a debt which is or will be provided for by the plan."

(5) The reference in Rule 919(a) to "notice to the creditors as provided in Rule 203(a) and

to such other persons as the court may designate" shall be read as "such notice to such persons as the court may designate."

(6) The reference in Rule 922(b) to Rule 102 shall be read as a reference to Rule 13-102.

(7) The reference in Rule 924 to the time allowed by § 15 of the Act for the filing of a complaint to revoke a discharge shall be read to include also a reference to the time allowed by § 671 of the Act for the filing of a complaint to revoke the confirmation of a plan.

Notes of Advisory Committee on Rules

With the changes, substitutions and translations indicated in this rule and in Rule 13-2, Part IX of the Bankruptcy Rules (Rules 901 to 928 inclusive) applies in Chapter XIII cases.

OFFICIAL CHAPTER XIII FORMS

[NOTE. These official forms should be observed and used, with such alterations as may be appropriate to suit the circumstances. See Bankruptcy Rule 909;; made applicable by Rule 13-901.]

Form	
13-1.	Original Petition Under Chapter XIII.
13-2.	Application to Pay Filing Fees in Installments.
13-3.	Order for Payment of Filing Fees in Installments.
13-4.	Chapter XIII Petition in Pending Bankruptcy Case.
13-5.	Chapter XIII Statement.
13-6.	Chapter XIII Plan.
13-7.	Order for First Meeting of Creditors and Related Orders, Combined With Notice Thereof and of Automatic Stay.
13-8.	Power of Attorney.
13-9.	Proof of Claim; Acceptance or Rejection of Plan.
13-10.	Proof of Claim by Debtor or Trustee.
13-11.	Bond of Trustee.
13-12.	Order Approving Trustee's Bond.
13-13.	Certificate of Designation as Trustee.
13-14.	Order Fixing Time to Reject Modification of Plan Prior to Confirmation, Combined With Notice Thereof.
13-15.	Order Confirming Plan.
13-16.	Discharge of Debtor.

FORM 13-1. ORIGINAL PETITION UNDER CHAPTER XIII.

United States District Court
for the ______ District of ______

In re
______ ______ Bankruptcy No. ______
Debtor, Soc. Sec. No. ______
[*include here all names used by debtor within last 6 years*]

Original Petition Under Chapter XIII

1. Petitioner's post-office address is ____________.

2. Petitioner has his principal place of employment [*or* his residence *or* his domicile] within this district.

3. No bankruptcy case initiated on a petition by or against petitioner is now pending.

4. Petitioner is qualified to file this petition and is entitled to the benefits of Chapter XIII of the Bankruptcy Act.

5. Petitioner is insolvent [*or* unable to pay his debts as they mature].

6. A copy of petitioner's proposed plan is attached [*or* Petitioner intends to file a plan pursuant to Chapter XIII of the Act].

Wherefore petitioner prays for relief under Chapter XIII of the Act.

Signed: ______ ______,
Attorney for Petitioner.
Address: ____________, ____________

[*Petitioner signs if not represented by attorney.*]

______ ______,
Petitioner.

State of ____________ }
County of __________ } *ss.*

I, ______ ______, the petitioner named in the foregoing petition, do hereby swear that the statements contained therein are true according to the best of my knowledge, information, and belief.

______ ______,
Petitioner.

Subscribed and sworn to before me on ____________.

______ ______, ______ ______
[*Official character*]

[*Unless further time is granted by the court there must be filed with this petition or within 10 days thereafter both a Chapter XIII Statement (Official Form No. 13-5) pursuant to Rule 13-107 and a Chapter Plan (Official Form No. 13-6) pursuant to Rule 13-201.*]

Notes of Advisory Committee on Rules

This form is a revision of Official Form No. 58. Numerous changes have been made in the interest of eliminating unnecessary words and reducing the number of formal entires to be made by the petitioner. It may be adapted for use as a joint petition of husband and wife as authorized by Rule 13-111.

Rule 13-105 requires the caption in which the name of the debtor is given to include also his social security number and all the names used by him within 6 years before the filing of the petition.

Filing of a plan with the petition is optional. See Rule 13-201. Official Form No. 13-6 provides a form of Chapter XIII Plan.

The schedules and statement of affairs referred to in Official Form No. 58 are replaced by a single Chapter XIII Statement (Official Form No. 13-5) and the statement of executory contracts is no longer required in all cases although the court may require it in a particular case pursuant to Rule 13-402. A note at the foot of the form calls the petitioner's attention to the necessity of filing the Chapter XIII Statement as provided in Rule 13-107 and the Chapter XIII plan as provided by Rule 13-201.

Blanks for the signature and address of the petitioner's attorney are added in conformity with Bankruptcy Rule 911(a), made applicable by Rule 13-901. Only the original need be signed and verified, but the copies should be conformed to the original. See Bankruptcy Rule 911(c). If the petitioner is not represented by an attorney he must sign the petition.

FORM 13-2. APPLICATION TO PAY FILING FEES IN INSTALLMENTS.

[*Caption, other than designation, as in Form No. 13-1*]

Application to Pay Filing Fees in Installments

1. Applicant is filing herewith a petition under Chapter XIII of the Act.

2. He is unable to pay $______ [*or* all] of the filing fees except in installments.

3. He proposes that such fees be paid to the clerk of the district court upon the following terms:

----

4. He has paid no money and transferred no property to his attorney for services in connection with this case or with any pending bankruptcy case, and he will make no payment or transfer to his attorney for such services.

Wherefore applicant prays that he be permitted to pay $______ [*or* all] of the filing fees in installments.

Dated: ____________.

Signed: ______ ______,
Applicant.
Address: ____________,
____

NOTES OF ADVISORY COMMITTEE ON RULES

This form is new. The application for permission to pay filing fees in installments may be filed in accordance with Rule 13-106(b).

FORM 13-3. ORDER FOR PAYMENT OF FILING FEES IN INSTALLMENTS.

[*Caption, other than designation, as in Form No. 13-1*]

ORDER FOR PAYMENT OF FILING FEES IN INSTALLMENTS

The application of the debtor for permission to pay the filing fees in this case in installments having been heard:

It is ordered that the debtor pay the filing fees still owing, namely, $______, as follows:

--.

It is further ordered that all payments be made at the office of the clerk of the United States District Court located at ____________, that the debtor shall pay no money and shall transfer no property to his attorney, that his attorney shall accept no money or property from the debtor for services in connection with this case or any pending bankruptcy case, and that any award of compensation to the attorney for services in connection with this case and any pending bankruptcy case shall be governed by Rule 13-309 and Bankruptcy Rule 219.

Dated: ____________.

______ ______,
Bankruptcy Judge.

NOTES OF ADVISORY COMMITTEE ON RULES

This form is new. Issuance of the order permitting payment of filing fees in installment is governed by Rule 13-106(b).

FORM 13-4. CHAPTER XIII PETITION IN PENDING BANKRUPTCY CASE.

[*Caption, other than designation, as in Form No. 13-1*]

CHAPTER XIII PETITION IN PENDING BANKRUPTCY CASE

1. Petitioner's post-office address is ____________.

2. Petitioner is the bankrupt in Bankruptcy No. ______, pending in this court.

3. Petitioner is qualified to file this petition and is entitled to the benefits of Chapter XIII of the Bankruptcy Act.

4. Petitioner is insolvent [*or* unable to pay his debts as they mature].

5. A copy of petitioner's proposed plan is attached [*or* Petitioner intends to file a plan pursuant to Chapter XIII of the Act.]

Wherefore petitioner prays for relief under Chapter XIII of the Act.

Dated: ____________.

Signed: ______ ______,
Attorney for Petitioner.
Address: ____________,
____

[*Petitioner signs if not represented by attorney.*]

______ ______,
Petitioner.

State of ____________ }
County of __________ } *ss.*

I, ______ ______, the petitioner named in the foregoing petition, do hereby swear that the statements contained therein are true according to the best of my knowledge, information, and belief.

______ ______,
Petitioner.

Subscribed and sworn to before me on________.

______ ______,
______ ______
[*Official character*]

[*Unless further time is granted by the court there must be filed with this petition or within 10 days thereafter both a Chapter XIII Statement (Official Form No. 13-5) pursuant to Rule 13-107 and a Chapter XIII Plan (Official Form No. 13-6) pursuant to Rule 13-201.*]

NOTES OF ADVISORY COMMITTEE ON RULES

This form is new. Save as indicated below it conforms to Official Form No. 13-1 and the Note to that form should be consulted. It may be adapted for use as a joint petition of husband and wife as authorized by Rule 13-111.

This petition contains no allegations as to venue, which will already have been made in the petition initiating the pending bankruptcy case. If venue is improper, Bankruptcy Rule 116(b)(2) or Chapter XIII Rule 13-110 (b)(2) will apply.

Paragraph two of this form requires identification of the pending bankruptcy case.

A note at the foot of the form calls the petitioner's attention to the necessity of filing the Chapter XIII Statement as provided in Rule 13-107 and the Chapter XIII Plan as provided in Rule 13-201. The Chapter XIII Statement must be filed even though schedules and a statement of affairs have already been filed in the pending bankruptcy case.

FORM 13-5. CHAPTER XIII STATEMENT.

[*Caption, other than designation, as in Form No. 13-1*]

CHAPTER XIII STATEMENT

[Each question should be answered or the failure to answer explained. If the answer is "none," this should be stated. If additional space is needed for the answer to any question, a separate sheet, properly identified and made a part hereof, should be used and attached.

The term, "original petition," as used in the following questions, shall mean the original petition filed under Rule 13-103 or, if the petition is filed under Rule 13-104 in a pending bankruptcy case, shall mean the bankruptcy petition by or against you which originated the pending bankruptcy case.

This form must be completed in full whether a single or a joint petition is filed. When information is requested for "each" or "either spouse filing a petition" it should be supplied for both when a joint petition is filed.]

1. Name and residence.
   a. Give full name.
      Husband ______ ______
      Wife ______ ______
   b. Where does each spouse filing a petition now reside?
      (1) Mailing address
          Husband ______________________________
          Wife ______________________________
      (2) City or town
          Husband ______________________________
          Wife ______________________________
      (3) Telephone number
          Husband ______________________________
          Wife ______________________________
   c. What does each spouse filing a petition consider his or her residence, if different from that listed in b, above?
      Husband ______________________________
      Wife ______________________________
2. Occupation and income.
   a. Give present occupation of each spouse filing a petition. (If more than one, list all for each spouse filing a petition.)
      Husband ______________________________
      ____
      Wife ______________________________
      ____
   b. What is the name, address and telephone number of present employer (or employers) of each spouse filing a petition? (Include also any identifying badge or card number with employer.)
      Husband ______________________________
      ____
      Wife ______________________________
      ____
   c. How long has each spouse filing a petition been employed by present employer?
      Husband ______________________________
      ____
      Wife ______________________________
      ____
   d. If either spouse filing a petition has not been employed by present employer for a period of 1 year, state the name of prior employer(s) and nature of employment during that period.
      Husband ______________________________
      ____
      Wife ______________________________
      ____
      ____
   e. Has either spouse filing a petition operated a business, in partnership or otherwise, during the past 3 years? (If so, give the particulars, including names, dates, and places.)
      Husband ______________________________
      ____
      Wife ______________________________
      ____
   f. Answer the following questions for each spouse whether single or joint petition is filed unless spouses are separated and a single petition is filed:
      (1) Is your current pay period:

	Husband	Wife
(a) Weekly	______	______
(b) Semi-monthly	______	______
(c) Monthly	______	______
(d) Other (specify)	______	______

      (2) What are your gross wages, salary or commissions per pay period?

Husband	Wife
______	______

      (3) What are your payroll deductions per pay period for:

	Husband	Wife
(a) Payroll taxes (including social security)	______	______
(b) Insurance	______	______
(c) Credit union	______	______
(d) Union dues	______	______
(e) Other (specify)	______	______

      (4) What is your take-home pay per pay period?

Husband	Wife
______	______

      (5) Is your employment subject to seasonal or other change?

Husband	Wife
______	______

      (6) What was the amount of your gross income for the last calendar year?

Husband	Wife
______	______

      (7) Has either of you made any wage assignments or allotments? (If so, indicate which spouse's wages assigned or allotted, the name and address of the person to whom assigned or allotted, and the amount owing, if any, to such person. If allotment or assignment is to a creditor, his claim should also be listed in Item 11a.)
          ____
          ____
          ____

3. Dependents. (To be answered for each spouse whether single or joint petition is filed unless spouses are separated and a single petition is filed.)

a. Does either of you pay [*or* receive] alimony, maintenance, or support? ______ If so, how much per month? ______ For whose support? (Give name, age, and relationship to you.)

Husband ____________________________________

____

____

Wife ______________________________________

____

____

b. List all other dependents, other than present spouse, not listed in a. above. (Give name, age, and relationship to you.)

Husband ____________________________________

____

____

Wife ______________________________________

____

____

4. Budget.

a. Give estimated average future monthly income for each spouse whether single or joint petition is filed unless spouses are separated and a single petition filed.

(1) Husband's monthly take-home pay	______
(2) Wife's monthly take-home pay	______
(3) Other monthly income (specify)	______
Total	______

b. Give estimated average future monthly expenses of family (not including debts to be paid under plan), consisting of:

(1) Rent or home mortgage payment (includes lot rental or trailer)	______
(2) Utilities (Electricity ______, Heat ______ Water ______ Telephone ______.)	______
(3) Food	______
(4) Clothing	______
(5) Laundry and cleaning	______
(6) Newspapers, periodicals, and books (including school books)	______
(7) Medical and drug expenses	______
(8) Insurance (not deducted from wages)	
(a) Auto	______
(b) Other	______
(9) Transportation (not including auto payments to be paid under plan)	______
(10) Recreation	______
(11) Club and union dues (not deducted from wages)	______
(12) Taxes (not deducted) from wages)	______
(13) Alimony, maintenance, or support payments	______
(14) Other payments for support of dependents not living at home	______
(15) Other specify	
______________________	______
______________________	______
______________________	______
Total	______

c. Excess of estimated future monthly income (last line of Item 4a, above) over estimated future expenses (last line Item 4b, above)	______
d. Total amount to be paid each month under plan	______

5. Payment of attorney.

a. How much have you agreed to pay or what property have you agreed to transfer to your attorney in connection with this case?	______
b. How much have you paid or what have you transferred to him?	______

6. Tax refunds. (To be answered for each spouse whether single or joint petition is filed unless spouses are separated and a single petition is filed.)

To what tax refunds (income or other), if any, is either of you, or may either of you be, entitled? (Give particulars, including information as to any refunds payable jointly to you or any other person. All such refunds should also be listed in Item 13b.)

____

____

7. Bank accounts and safe deposit boxes. (To be answered for each spouse whether single or joint petition is filed unless spouses are separated and a single petition is filed.)

a. Does either of you currently have any bank or savings and loan accounts, checking or savings? (If so, give name and address of bank, nature of account, current balance, and name and address of every other person authorized to make withdrawals from the account. Such accounts should also be listed in Item 13b.

____

____

b. Does either of you currently keep any safe deposit boxes or other depositories? (If so, give name and address of bank or other depository, name and address of every other person who has a right of access thereto, and a brief description of the contents thereof, which should also be listed in Item 13b.)

____

____

8. Priority Bankruptcy.

What proceedings under the Bankruptcy Act have previously been brought by or against either spouse filing a petition? (State the location of the bankruptcy court, the nature and number of each proceeding, the date when it was filed, and whether a discharge was granted or refused, the proceeding was dismissed, or a composition, arrangement, or plan was confirmed.)

9. Foreclosures, executions, and attachments. (To be answered for each spouse whether single or joint petition is filed unless spouses are separated and a single petition is filed.)

a. Is any of the property of either of you, including real estate, involved in a foreclosure proceeding, in or out of court? (If so, identify the property and the person foreclosing.)

b. Has any property or income of either of you been attached, garnished, or seized under any legal or equitable process within the 4 months immediately preceding the filing of the original petition herein? (If so, describe the property seized or person garnished, and at whose suit.)

10. Repossessions and returns. (To be answered for each spouse whether single or joint petition is filed unless spouses are separated and a single petition is filed.)

Has any property of either of you been returned to, repossessed, or seized by the seller or by any other party, including a landlord, during the 4 months immediately preceding the filing of the original petition herein? (If so, give particulars, including the name and address of the party getting the property and its description and value.)

11. Debts. (To be answered for each spouse whether single or joint petition is filed.)

a. Secured Debts. List all debts which are or may be secured by real or personal property. (Indicate in sixth column, if debt payable in installments, the amount of each installment, the installment period (monthly, weekly, or other) and number of installments in arrears, if any. Indicate in last column whether husband or wife solely liable, or whether you are jointly liable.)

Creditor's name and address [If unknown, so state.]	Consideration or basis for debt	Amount claimed by creditor	If disputed, amount admitted by debtor	Description of collateral [include year and make of auto.]	Installment amount, period, and number of installments in arrears	Husband or wife solely liable, or jointly liable

[A9028]

b. Unsecured Debts. List all other debts, liquidated and unliquidated, including taxes, attorneys' fees and tort claims.

Creditor's name and address [If unknown, so state.]	Consideration or basis for debt	Amount claimed by creditor	If disputed, amount admitted by debtor	Husband or wife solely liable or jointly liable

[A9027

12. Codebtors. (To be answered for each spouse whether single or joint petition is filed.)

a. Are any other persons liable, as cosigners or in any other manner, on any of the debts of either of you or are either of you so liable on the debts of others? (If so, give particulars, indicating which spouse liable and and including names of creditors, nature of debt, names and addresses of codebtors, and their relationship, if any to you.)

b. If so, have such codebtors made any payments on such debts? (Give name of each codebtor and amount paid by him.)

c. Have either of you made any payments on such debts? (If so, specify total amount paid to each creditor, whether paid by husband or wife, and name of codebtor.)

13. Property. (To be answered for each spouse whether single or joint petition is filed.)

a. Real Property. List all real property owned by either of you at date of filing of original petition herein. (Indicate in last column whether owned solely by husband or wife, or jointly.)

Description and location of property	Name of any co-owner other than spouse	Present market value (without deduction for mortgage or other security interest)	Amount of mortgage or other security interest on this property	Name of mortgagee or other secured creditor	Value claimed exempt if any	Owned solely by husband or wife, or jointly

[A9026]

b. Personal Property. List all other property owned by either of you at date of filing of original petition herein.

Description	Location of property if not at debtor's residence	Name of any co-owner other than spouse	Present market value (without deduction for mortgage or other security interest)	Amount of mortgage or other security interest on this property	Name of mortgagee or other secured creditor	Value claimed exempt, if any	Owned solely by husband or wife, or jointly
Autos [give year and make]							
Household goods							
Personal effects							
Other (specify)							

[A9025]

[To be signed and verified by both spouses when joint petition is filed.]

State of --------------
County of ------------- } *ss.*

I, ------ ------, do hereby swear that I have read the answers contained in the foregoing statement, consisting of ------ sheets, and that they are true and complete to the best of my knowledge, information, and belief.

------ ------,
Husband.

Subscribed and sworn to before me on -----------.

------ ------,
------ ------,
[*Official character*]

I, ------ ------, do hereby swear that I have read the answers contained in the foregoing statement, consisting of ------ sheets, and that they are true and complete to the best of my knowledge, information, and belief.

------ ------,
Wife.

Subscribed and sworn to before me on -----------.

------ ------
------ ------
[*Official character*]

Attorney for Debtor(s):

------ ------,
Name

Address

NOTES OF ADVISORY COMMITTEE ON RULES

This form is new and replaces, for use in Chapter XIII cases, the Official Forms for schedules A and B, accompanying Official Form No. 1, and Official Form No. 2, the Statement of Affairs for a debtor not engaged in business. It may be used whether a single Chapter XIII petition is filed or a joint petition is filed by husband and wife as authorized by Rule 13-111.

The information previously required by the schedules and the information as to past transactions previously required by the Statement of Affairs has been considerably reduced. In view of the focus under Chapter XIII on future performance under a plan and of the court's obligation under § 656a(2) of the Act to find that the plan is feasible where not accepted by all affected creditors, however, the Chapter XIII Statement requires the sort of disclosure about estimated future income and expenses heretofore elicited by unofficial forms or by examination of the debtor at the first meeting of creditors. Question 4 of the Statement, calling for a detailed family budget, is particularly designed to insure that the debtor and his attorney will have complied information relative to the feasibility of the plan prior to the first creditors' meeting.

Inquiry as to most transactions and developments affecting the financial condition of the debtor is limited to the year preceding the filing of the petition or to a shorter period. The scope of examination at the first meeting or at any other time is in no way restricted, of course, by the scope of the inquiries in the Chapter XIII Statement.

New questions have been added concerning tax refunds (#6), repossessions and returns of property by the debtor (#10) and payments or transfers to his attorney (#5). The questions asked in this last paragraph seek information relevant to the examination authorized to be conducted by the court pursuant to Rule 13–210.

The official forms for the schedules heretofore required have called for a signature on each of the 11 schedules (A–1 to A–5 and B–1 to B–6) and an oath to accompany the schedule of debts as well as another to accompany the schedule of Property. In addition, the Statement of Affairs has required a separate oath. A single oath for the Chapter XIII Statement, or one by each spouse when a joint petition is filed by husband and wife, has been substituted for the multiple subscription requirements heretofore imposed. The oath requires a specification of the number of sheets included in the statement and an acknowledgment that the affiant has read them. Although Chapter XIII Statements are required by Rule 13–107 to be filed in the same number as the petition they accompany (see Rules 13–101 and 13–104), only the original need be signed and verified, but the copies must be conformed to the original. See Bankruptcy Rule 911(c), made applicable by Rule 13–901.

FORM 13–6. CHAPTER XIII PLAN.

[*Caption, other than designation, as in Form No. 13–1*]

CHAPTER XIII PLAN

1. The future earnings of the debtor are submitted to the supervision and control of the court and the debtor [*or* the debtor's employer] shall pay to the trustee the sum of $______ weekly [*or* semi-monthly *or* monthly].

2. From the payments so received, the trustee shall make disbursements as follows:

   a. The priority payments required by Rule 13–309(a).

   b. After the above payments, dividends to secured creditors whose claims are duly proved and allowed as follows:

   ____
   ____
   ____
   ____
   ____
   ____

   c. Subsequent to [*or* pro rata with] dividends to secured creditors, dividends to unsecured creditors whose claims are duly proved and allowed as follows:

   ____
   ____
   ____
   ____

3. [*If applicable*] The following executory contracts of the debtor are rejected:

____
____
____

4. Title to the debtor's property shall revest in the debtor on confirmation of a plan [*or* upon dismissal of the case after confirmation pursuant to Rule 13–215 or upon closing of the case pursuant to Bankruptcy Rule 514].

Dated: ____________.

______ ______,
Debtor.

Acceptances may be mailed to

______ ______,
____
[*Post office address*]

NOTES OF ADVISORY COMMITTEE ON RULES

This form is new and, as provided in Bankruptcy Rule 909, made applicable by Rule 13–901, is to be used "with such alterations as may be appropriate to suit the circumstances." Paragraph 4 implements § 70i of the Act. If the plan does not provide that title is to revest in the debtor on confirmation of the plan, both of the alternatives specified in the bracketed language of the paragraph should be used. Under Rule 13–213(c) a certified copy of the plan and of the order confirming it constitute conclusive evidence of revesting and, if recorded, will impart constructive notice of revesting under § 21h of the Act. It is not contemplated that the entries in the blank spaces in paragraph 2c will, or that the entries in paragraph 2b must, specify the names of creditors.

FORM 13–7. ORDER FOR FIRST MEETING OF CREDITORS AND RELATED ORDERS, COMBINED WITH NOTICE THEREOF AND OF AUTOMATIC STAY.

[*Caption, other than designation, as in Form No. 13–1*]

ORDER FOR FIRST MEETING OF CREDITORS AND RELATED ORDERS, COMBINED WITH NOTICE THEREOF AND OF AUTOMATIC STAY

To the debtor, his creditors, and other parties in interest:

______ ______ of [1] ____________, having filed a petition on ____________ stating that he desires to effect a plan under Chapter XIII of the Bankruptcy Act, it is ordered, and notice is hereby given, that:

1. The first meeting of creditors shall be held at ____________, on ____________, at ______ o'clock __.m.

2. The debtor shall appear in person before the court at that time and place for the purpose of being examined.

3. The hearing on confirmation of the plan shall be held at the first meeting [*or* at ____________, on __________ at ______ o'clock __.m. *or* at a date to be later fixed at the first meeting].

You are further notified that:

The meeting may be continued or adjourned from time to time by order made in open court, without further written notice to creditors.

Creditors may file written objections to confirmation at any time prior to confirmation.

Creditors holding secured claims must, unless an extension of time is granted, file their claims on or before the date above set for the first meeting of creditors and all such creditors who fail to do so will not be treated as secured creditors for purposes of voting and distribution in the Chapter XIII case. At the meeting unsecured creditors may also file their claims, and all creditors may examine the debtor as permitted by the court, and transact such other business as may properly come before the meeting. In order to have his claim allowed for the purpose of voting and distribution, a creditor must file a claim, whether or not he is included in the list of creditors filed by the debtor. Where the Chapter XIII petition is filed in a pending bankruptcy case, claims filed in the bankruptcy case must be timely amended pursuant to Rule 13-302(f). Claims which are not filed within 6 months after the date above set for the first meeting of creditors will not be allowed except as otherwise provided by law.

Any creditor filing a claim who has not filed a written acceptance or rejection of the plan pursuant to Rule 13-202 prior to the conclusion of the first meeting of creditors, in his proof of claim or otherwise, will be deemed to have accepted the plan.

The filing of the petition by the debtor above named operates as a stay of the commencement or continuation of any action against the debtor, of the enforcement of any judgment against him, of any act or the commencement or continuation of any act or the commencement or continuation of any court proceeding to enforce any lien on the property of the debtor, and of any court proceeding for the purpose of rehabilitation of the debtor or the liquidation of his estate, as provided by Rule 13-401.

A claim and an acceptance or rejection of the plan may be filed in the office of the undersigned bankruptcy judge on an official form prescribed in a proof of claim.

Dated: ------------.

------ ------,

Bankruptcy Judge.

[1] State post-office address.

Notes of Advisory Committee on Rules

Insofar as this form embodies an order, it is new. Insofar as it embodies a notice, it revises Official Form No. 59. Paragraph 3 contains alternatives authorized by Rules 13-204(a) (2) and 13-213(a). The third un-numbered paragraph is based on Rule 13-213(a), the fourth un-numbered paragraph on Rules 13-206(b), and 13-302 (e) and (f), and the fifth un-numbered paragraph on Rule 13-202. The penultimate paragraph informs creditors and other recipients of the effect given the filing of the petition as a stay by Rule 13-401. The last paragraph is added to minimize confusion and unnecessary queries regarding the execution and filing of proofs of claim under Rules 13-301 and 13-302.

The provision for acceptance or rejection of the plan in the creditor's proof of claim is optional and is not intended to reduce the time allowed for proofs of claim under Rule 13-302(e). As provided in Rule 13-202(a), acceptances may be obtained by the debtor before or after the filing of the petition and may be filed by him with the court on behalf of the accepting creditor. A copy or a summary of the latest plan filed by the debtor pursuant to Rule 13-201 and a copy of a proof of claim form which substantially conforms to Official Form No. 13-9 should be attached to this combined order and notice.

FORM 13-8. POWER OF ATTORNEY

[*Caption, other than designation, as in Form No. 13-1*]

Power of Attorney

To ----- -----, of[1] -------, and ------ ------, of ------------:

The undersigned claimant hereby authorizes you, or any one of you, as attorney in fact for the undersigned and with full power of substitution, to receive dividends and in general to perform any act not constituting the practice of law for the undersigned in all matters arising in this case.

Dated: ------------.

Signed: ------ ------

[*If appropriate*] By ------ ------

as ------ ------

Address: ------------, ------------

[*If executed by an individual*] Acknowledged before me on ------------.

[*If executed on behalf of a partnership*] Acknowledged before me on ---------, by ------ ------, who says that he is a member of the partnership named above and is authorized to execute this power of attorney in its behalf.

[*If executed on behalf of a corporation*] Acknowledged before me on ------------, by ------ ------, who says that he is --------- of the corporation named above and is authorized to execute this power of attorney on its behalf.

------ ------,

------ ------,

[*Official character*],

[1] State post-office address.

Notes of Advisory Committee on Rules

Bankruptcy Rule 910(c), as modified by Rule 13-901(3), requires a power of attorney to be prepared substantially in conformity with this form, but the form may grant either more or less authority in accordance with the language used.

While a power of attorney may of course be executed in favor of an attorney at law who is also retained as such to represent the creditor executing the form, the power of attorney does not purport to confer the right to act as an attorney at law. The corollary is that one not an attorney at law may act under a power of attorney within the limitations prescribed in the form.

While Bankruptcy Rule 910(c), as modified by Rule 13-901 (3), does not require a written power of attorney for the purpose of filing a proof of claim or voting on a plan, Official Forms Nos. 13-9 and 13-10 require a partner, corporate officer or other agent filing a proof of claim to state that he is authorized to file the claim and, if the proof of claim also contains an acceptance or rejection of the plan, to state also that he is authorized to accept or reject the plan.

The statement respecting authority required in the acknowledgement accompanying a power of attorney executed on behalf of a partnership or corporation is in lieu of the requirement of General Order 21(5) that such an instrument be accompanied by an oath that the person executing is a member of the partnership or a duly authorized officer of the corporation.

FORM 13-9. PROOF OF CLAIM; ACCEPTANCE OR REJECTION OF PLAN.

[*Caption, other than designation, as in Form No. 13-1*]

Proof of Claim; Acceptance or Rejection of Plan

1. [*If claimant is an individual claiming for himself*] The undersigned, who is the claimant herein, resides at ------------.

[*If claimant is a partnership claiming through a member*] The undersigned, who resides at ------ ------, is a member of ------------, a partnership composed of the undersigned and ------ ------, of

____________, and doing business at ____________, and is authorized to make this proof of claim [*if appropriate,* and to accept or reject the plan] on behalf of the partnership.

[*If claimant is a corporation claiming through an authorized officer*] The undersigned, who resides at ____________, is the ____________ of ____________, a corporation organized under the laws of____________ and doing business at ____________, and is authorized to make this proof of claim [*if appropriate,* and to accept or reject the plan] on behalf of the corporation.

[*If claim is made by agent*] The undersigned, who resides at ____________, is the agent of ____________, of ____________, and is authorized to make this proof of claim [*if appropriate,* and to accept or reject the plan] on behalf of the claimant.

2. The debtor was, at the time of the filing of the petition initiating this case, and still is indebted [*or* liable] to this claimant in the sum of $______.

3. The consideration for this debt [*or* ground of this liability] is as follows: ____________________ ____ ____.

4. This claim consists of $______ in principal amount and $______ in additional charges [*or* no additional charges]. [*Itemize all charges in addition to principal amount of debt, state basis for inclusion and computation, and set forth any other consideration relevant to the legality of any charge.*] ____ ____ ____ ____ ____.

5. [*If the claim is founded on a writing*] The writing on which this claim is founded (or a duplicate thereof) is attached hereto [*or* cannot be attached for the reason set forth in the statement attached hereto].

6. [*If appropriate*] This claim is founded on an open account, which became [*or* will become] due on ____________, as shown by the itemized statement attached hereto. Unless it is attached hereto or its absence is explained in an attached statement, no note or other negotiable instrument has been received for the account or any part of it.

7. No judgment has been rendered on the claim except ______________________________________ ____ ____.

8. The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.

9. This claim is not subject to any setoff or counterclaim except ____________________________ ____.

10. No security interest is held for this claim except ______________________________________ ____.

[*If security interest in property of the debtor is claimed*] The undersigned claims the security interest under the writing referred to in paragraph 5 hereof [*or* under a separate writing which (or a duplicate of which) is attached hereto, *or* under a separate writing which cannot be attached hereto for the reason set forth in the statement attached hereto]. Evidence of perfection of such security interest is also attached hereto.

[*Unless a security interest is properly claimed in this paragraph and proof of claimed filed on or before the first date set for the first meeting of creditors or within such extended time as the court may allow, claimant will not be treated as a secured creditor for purposes of voting and distribution in the Chapter XIII case.*]

11. This claim is a general unsecured claim, except to the extent that the security interest, if any, described in paragraph 10 hereof is sufficient to satisfy the claim. [*If priority is claimed, state the amount and the basis thereof.*] ____ ____ ____.

12. Claimant accepts [*or* rejects] the debtor's plan, dated ____________. [*Any creditor filing a claim who has not filed a written acceptance or rejection of the plan, in his proof of claim or otherwise, before the conclusion of the first meeting of creditors, will be deemed to have accepted the plan.*]

Dated: ____________.

Signed: ______ ______.

Penalty for Presenting Fraudulent Claim. Fine of not more than $5,000 or imprisonment for not more than 5 years or both—Title 18, U.S.C., § 152.

NOTES OF ADVISORY COMMITTEE ON RULES

This form combines the functions of Official Forms Nos. 28, 29, 30, and 31. It may be used by any claimant, or by an agent or attorney for any claimant. Such a combined form is commonly used in practice.

Paragraph 4 addresses itself to the requirement of Rule 13–301(a) that the proof of claim set forth facts showing that the claim is free from any charge forbidden by applicable law. Although Rule 13–301(b) provides that the proof of claim constitutes prima facie evidence of the validity and amount of the claim generally, it also authorizes the court to require any creditor to establish, in such manner as the court may require, that his claim is free from such charge.

Paragraph 10 implements the requirement of Rule 13–302(e)(1) that secured claims be promptly filed. In most cases there will be no reason why a secured creditor cannot file his claim on or before the first date set for the first meeting of creditors as the rule requires him to do. Where there is a reason why he cannot do so, Rule 13–302(e)(1) authorizes the court to grant him an extension of time. Where no such extensions are obtained the case may go forward on the basis that all claims not proved as secured claims at the first meeting of creditors may be dealt with as unsecured claims. A secured creditor who fails to prove his claim within the time allowed by Rule 13–302(e)(1) may still prove an unsecured claim within the time allowed by Rule 13–302(e)(2).

In order to facilitate confirmation of the plan and distribution to creditors, paragraph 10 also requires that any written security agreement (if not included in the writing on which the claim is founded, and which is required by paragraph 5 to be attached) be attached to the proof of claim or that the reason why it cannot be attached be set forth. Paragraph 10 further requires evidence of perfection of the security interest to be attached to the proof of claim. See the note to Rule 13–302(c) as to what constitutes satisfactory evidence of perfection. The information so required will expedite determination of the validity and perfection of security interests. See *City National Bank & Trust Co.* v. *Oliver*, 230 F.2d 686 (10th Cir. 1956).

Paragraph 11, requiring explicitness as to whether the claim is filed as a general, prior, or secured claim will also facilitate administration and minimize troublesome litigation over the question whether a proof of claim was intended as a waiver of security. See *e.g., United States National Bank* v. *Chase National Bank,* 331 U.S. 28, 35–36 (1946); 3 Collier ¶ 57.07[3.1] (1961).

Paragraph 12 implements the provisions of Rule 13–202 that all creditors filing claims must either accept or reject the plan which accompanies, or a summary of which accompanies, the notice of the first meeting of creditors before the conclusion of that meeting and that those failing to do so shall be deemed to have accepted the plan. It is not necessary that the plan be accepted or rejected in the proof of claim if it is otherwise timely accepted or rejected in the manner required by Rule 13–202, but if a partner, corporate officer or other agent signing a proof of claim does accept or reject the plan by appropriate indication in paragraph 12, his proof of claim should contain a statement in paragraph 1 that he is authorized to do so.

FORM 13–10. PROOF OF CLAIM BY DEBTOR OR TRUSTEE

[*Caption, other than designation, as in Form No. 13–1*]

PROOF OF CLAIM BY DEBTOR OR TRUSTEE

1. [*If person making claim is an individual*] The undersigned, who is filing this proof of claim, is the debtor [*or* the trustee] in this case and resides at [1]____________.

[*If person making claim is a corporation acting through an authorized officer*] The undersigned, who resides at [1]____________ is the ____________ of ____________, a corporation organized under the laws of ____________ and doing business at [1]____________, which corporation is the trustee in this case, and is authorized to make this proof of claim on behalf of the corporation.

[*If claim is made by agent*] The undersigned, who resides at [1]____________, is the agent of ____________, of [1]____________ the debtor [*or* the trustee] in this case, and is authorized to make this proof of claim.

2. This claim is filed in the name of __________, of [1]____________, who asserts a claim against the debtor in the sum of $ ______.

3. The consideration for this debt [*or* ground for this liability] is as follows: ______________________

____

4. This claim consists of $ ____ in principal amount and $ ______ in additional charges [*or* no additional charges]. [*If appropriate*] The undersigned believes that $ ______ of the additional charges are illegal for the following reasons: _______

____

____

____

____

____

5. [*If the claim is founded on a writing*] The writing on which this claim is founded (or a duplicate thereof) is attached hereto [*or* cannot be attached for the reason set forth in the statement attached hereto.]

6. [*If appropriate*] This claim is founded on an open account, which became [*or* will become] due on ____________. A note or other negotiable instrument was given for $______ of the account on ____________ [*or* no note or other negotiable instrument was given for the account or any part of it].

7. No judgment has been rendered on the claim except ____________________________________

____

8. The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.

9. This claim is not subject to any setoff or counterclaim except________________________________

____

10. No security interest is held for this claim except ____________________________________

[*If security interest in property of the debtor is held*] Claimant asserts the security interest under the writing referred to in paragraph 5 hereof [*or* under a separate writing which (or a duplicate of which) is attached hereto, *or* under a separate writing which cannot be attached hereto for the reason set forth in the statement attached hereto].

11. This claim is a general unsecured claim, except to the extent that the security interest, if any, described in paragraph 10 hereof is sufficient to satisfy the claim.

[*If claim is or may be entitled to priority, state the amount and the basis thereof.*]

____

____

____

Dated: __________.

Signed: ______ ______.

Penalty for Presenting Fraudulent Claim. Fine of not more than $5,000 or imprisonment for not more than 5 years or both—Title 18, U.S.C., § 152.

[1] State post-office address.

NOTES OF ADVISORY COMMITTEE ON RULES

This form which is new, is designed for use by a debtor or trustee when filing a proof of claim, as authorized by Rule 13–303, in the name of a creditor who has not filed his claim on or before the first date set for the first meeting of creditors in the Chapter XIII case. As provided in the rule, the creditor may supersede this proof of claim by timely filing of his own proof of claim pursuant to Rule 13–302. Under Rule 13–302(e)(1), if a secured creditor does not file his own proof of claim on or before the first date set for the first meeting of creditors, or within such extended time as fixed by the court, he will not be treated as a secured creditor for purposes of voting and distribution under the plan. Under Rule 13–202(a) any creditor filing a claim who has not filed a written acceptance or rejection of the proposed plan by the conclusion of the first meeting of creditors is deemed to have accepted the plan. The filing of a proof of claim by the debtor or the trustee will not affect the operation of Rule 13–302(e)(1) or Rule 13–202(a).

FORM 13–11. BOND OF TRUSTEE.

[*Caption, other than designation, as in Form No. 13–1*]

BOND OF TRUSTEE

We, ______ ______ of [1] __________, as principal, and ______ ______ of [1] ____________, as surety, bind ourselves to the United States in the sum of $______ for the faithful performance by the undersigned principal of his official duties as trustee of the estate of the above-named debtor.

Dated: ------------.

------ ------,

------ ------

[1] State post-office address.

NOTES OF ADVISORY COMMITTEE ON RULES

This form is a simplification of Official Form No. 23. It may be used for an individual bond under Rule 13–205(b)(2) or, by modification of the caption, the reference in the bond to the debtor, and, where necessary, the reference to the principal, it may be adapted for use when a blanket bond is given under Rule 13–205(a)(2) or (b)(2). Unless otherwise provided by local rule, the bond of a standing trustee is to be filed with the clerk of court in accordance with Rule 13–205(a)(2) and any other trustee's bond is to be filed with the referee in accordance with Rule 13–205(b)(2).

FORM 13–12. ORDER APPROVING TRUSTEE'S BOND.

[*Caption, other than designation, as in Form No. 13–1*]

ORDER APPROVING TRUSTEE'S BOND

The bond filed by ------ ------ of[1] ------------, as trustee of the estate of the above-named debtor is hereby approved.

Dated: ------------.

------ ------,

Bankruptcy Judge.

[1] State post-office address.

NOTES OF ADVISORY COMMITTEE ON RULES

This form is an adaptation of Official Form No. 24. This order constitutes conclusive evidence of the trustee's appointment and qualification under Rule 13–205(f) and, when a certified copy of the order is recorded, constructive notice of the pendency of the Chapter XIII case is afforded thereby to subsequent purchasers and lienors of the debtor's real property as provided in § 21g of the Act. The form may be adapted for use when a blanket bond is given pursuant to Rule 13–205(a)(2) or (b)(2). Rule 13–205(b)(2) also authorizes the court to approve other security than a bond and the order approving other security also constitutes conclusive evidence of the trustee's appointment and qualification under Rule 13–205(f), but recordation of such an order would not come within the scope of § 21g. A copy of the petition may be recorded pursuant to § 21g, however.

FORM 13–13. CERTIFICATE OF DESIGNATION AS TRUSTEE.

[*Caption, other than designation, as in Form No. 13–1*]

CERTIFICATE OF DESIGNATION AS TRUSTEE

------ ------ of[1] ------------, standing trustee [*or* having previously filed a blanket bond approved by the court] has been designated as trustee of the estate of the above-named debtor.

Dated: ------------.

------ ------,

Bankruptcy Judge.

[1] State post-office address.

NOTES OF ADVISORY COMMITTEE ON RULES

This form is to be used only where there is a standing trustee or where the trustee appointed in a particular case has posted a blanket bond so that the order approving the bond will not carry the caption of the particular case. This certificate of designation of such trustees in a particular case, like the order approving the trustee's bond or other security in other case, constitutes conclusive evidence of the trustee's appointment and qualification under Rule 13–205(f). Recordation of this order does not impart constructive notice under § 21g of the Act, but a copy of the petition may be recorded pursuant to § 21g.

FORM 13–14. ORDER FIXING TIME TO REJECT MODIFICATION OF PLAN PRIOR TO CONFIRMATION, COMBINED WITH NOTICE THEREOF.

[*Caption, other than designation, as in Form No. 13–1*]

ORDER FIXING TIME TO REJECT MODIFICATION OF PLAN PRIOR TO CONFIRMATION, COMBINED WITH NOTICE THEREOF

To the debtor, his creditors, and other parties in interest:

The debtor having filed a modification of his plan on ------------, it is ordered and notice is hereby given, that:

1. ------------ is fixed as the last day for filing a written rejection of the modification.

2. A copy [*or* A summary] of the modification is attached hereto. Any creditor who has accepted, or who is deemed to have accepted, the plan and who fails to file a written rejection of the modification within the time above specified shall be deemed to have accepted the plan as modified.

Dated: ------------.

------ ------,

Bankruptcy Judge.

NOTES OF ADVISORY COMMITTEE ON RULES

This form, which is new, combines the order and notice provided for by Rule 13–212 where the debtor proposes a modification of a plan prior to confirmation.

FORM 13–15. ORDER CONFIRMING PLAN.

[*Caption, other than designation, as in Form No. 13–1*]

ORDER CONFIRMING PLAN

The debtor's plan filed on ------------, [*if appropriate*, as modified by a modification filed on ------------,] having been transmitted to his creditors; and

[*If appropriate*] The deposit required by the plan in the sum of $------ having been made; and

It having been determined after hearing on notice:

(1) That the plan has been accepted in writing, or is deemed to have been accepted, by the creditors whose acceptance is required by law [*or* by all creditors affected thereby]; and

(2) That the plan has been proposed and its acceptance procured in good faith and not by any means, promises, or acts forbidden by law [*and, if the plan is accepted by less than all affected creditors,* the provisions of Chapter XIII of the Act have been complied with, the plan is for the best interests of the creditors and is feasible, and the debtor has not been guilty of any of the acts or failed to perform any of the duties which would be a bar to the discharge of a bankrupt];

It is ordered that:

1. The debtor's plan [*if appropriate*, as modified] is confirmed.
2. On ____________, and each ____________ thereafter until further order, the debtor shall pay [*or* ______, ______, the employer of the debtor, shall deduct from the wages, salary, or commissions of the debtor and pay] to the trustee, ______, ______ of[1] __________ the sum of $______.

Dated: _____________.

______ ______,

Bankruptcy Judge.

[1] State post-office address.

NOTES OF ADVISORY COMMITTEE ON RULES

This form combines and revises Official Forms Nos. 61 and 62 to comply with Rule 13-213. As provided in that rule, the amount of payments to be made under the plan need not be contained in paragraph 2 of the order if specified in the confirmed plan, although the manner in which payments are to be made by the debtor or obtained from his employer should be specified. In any event, however, Rule 13-213(b) permits deletion of paragraph 2 from the order of confirmation and the susbtitution of a separate payment order.

FORM 13-16. DISCHARGE OF DEBTOR.

[*Caption, other than designation, as in Form No. 13-1*]

DISCHARGE OF DEBTOR

It appearing that the above-named debtor has filed a petition commencing a case under Chapter XIII of the Bankruptcy Act on ____________, has had a plan confirmed, and has completed all payments under said plan [*or* has failed to complete payments under the plan due to circumstances for which he cannot justify be held accountable], it is ordered that:

1. The above-named debtor is released from all dischargeable debts.

2. Any judgment heretofore or hereafter obtained in any court other than this court is null and void as a determination of the personal liability of the debtor with respect to any of the following:

(a) debts dischargeable under § 17 a and b and § 660 [*or* § 661] of the Act;

(b) unless heretofore or hereafter determined by order of this court to be nondischargeable, debts alleged to be excepted from discharge under clauses (2) and (4) of § 17a of the Act;

(c) unless heretofore or hereafter determined by order of this court to be nondischargeable, debts alleged to be excepted from discharge under clause (8) of § 17a of the Act, except those debts on which an action was pending on the date when the petition was filed as specified above in which a right to jury trial existed and a party has either made a timely demand therefor or has submitted to this court a signed statement of intention to make such a demand;

(d) debts determined by this court to be discharged under § 17c(3) of the Act.

3. All creditors whose debts are discharged by this order and all creditors whose judgments are declared null and void by paragraph 2 above are enjoined from instituting or continuing any action or employing any process to collect such debts as personal liabilities of the above-named debtor.

Dated: ___________

______ ______,

Bankruptcy Judge.

NOTES OF ADVISORY COMMITTEE ON RULES

This form is a revision of Official Form No. 45 to include the features required by § 14f of the Act. The dischargeable debts referred to in paragraph 1 include, under § 660 and § 661 of the Act, debts otherwise not dischageable under § 17 if held by creditors who have accepted the plan. The form takes account of 1970 amendments which added §§ 14f, 17b, and 17c and amended § 17a of the Act. The form goes beyond the requirements of new § 14f to include in the discharge order, as an aid to the debtor and to any other court to which he may present his discharge, an indication in subparagraphs (b) and (c) of paragraph 2 that exceptions to discharge under clauses (2), and (4), and in some instances (8) of § 17a of the Act can only be invoked in the bankruptcy court pursuant to Rule 13-407(a)(2). As provided in Rule 13-404(e), a copy of the order of discharge must be mailed to the persons specified in Rule 13-404(b)(1) within 45 days after the order becomes final.

GENERAL ORDER AND FORMS IN BANKRUPTCY TO BE ABROGATED

The following General Order and Official Forms in Bankruptcy heretofore adopted by the Supreme Court are to be abrogated:

General Order 55

Official Forms 58 to 62 inclusive.